THE VICE-CHAIRMAN (SHRI H HANUMANTHAPPA): He has already translated it.

SHRI ASHWANI KUMAR: My first question is, if the case was addressed by the Finance Ministry to the Swedish Audit Bureau, why was it not addressed to the C&AG? Secondly, I want to know whether the C&AG *suo motu* on its own, has enquired to find out the details of the Bofors case; if so, what is the progress in this regard? These are the two specific questions on which I want elucidation from the hon. Minister. And if he cannot answer that, I will seek your help for that, Sir.

SHRI JANARDHAN POOJARI: As to what happened prior to the constitution of the Joint Parliamentary Committee, my humble submission is that discsusion was going on. Now this point the hon. Member has raised for the first time. Now I am not dealing with this subject. We have to confine ourselves to the limitation of the subject. We have to keep in mind that we are dealing with the salaries and other amenities /perquisites to be given to the C&AG. I will write to him answering this question, why it has not been done and other things. I will reply; I will write to him

Nok, Sir, I have answered all the points raised by the hon. Members. I have answered all the points raised by hon'ble Shri Nirmal Chatterjee. I once again, at the cost of repetition....

SHRI ASHWANI KUMAR: About the service conditions of the staff and all others of the C&AG Department, I want clarification on that issue. will he be kind enough to give that clarification at least?

SHRI JANARDHAN POOJARI: All the major points which have been raised, I have answered. It is a simple Bill. I once again thank the hon Members and if at all the hon. Member is not satisfied, I will write to him in detail regarding the action taken on this

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): The question is:

"That the Bill further to amend the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted

THE VICE-CHAIRMAN We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JANARDHAN POOJARI: Sir, I beg to move:

"That the Bill be returned."

The question was put and the motion was adopted

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) (AMENDMENT) BILL, 1987

THE MINISTER OF PLANNING, THE MINISTER OF PROGRAMME IMPLEMENTATION AND THE MINISTER OF LAW AND JUSTICE (SHRI P. SHIV SHANKER): Mr. Vice-Chairman, Sir, I beg to move:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954, as passed by the Lok Sabha, be taken into consideration."

As you are aware, during the last year, substantial improvements in the service conditions of the Judges of the High Courts and the Supreme

[Shri P. Shiv Shanker]

Court have been made. The present Bill is also a result of our concern to bringing about further improvements in the service conditions of the Judges

In this Bill pased by the Lok Sabha on 30-11-87, it is proposed to increase the House Rent Allowance to the High Court Judges from the present 12½ per cent of the salary per month to a fixed amount of Rs 2,500 per month. This is being done to compensate such of those honourable Judges of the High Courts who have to stay in their own houses or have to make their own arrangements, as no Government accommodation can be made available to them

It may be appreciated that even after the substantial improvements in the salaries of the Judges, which has been increased from Rs 3,500 to Rs. 8,000 per month, an amount of 12-1|2 per cent as House Rent Allowance to the Judges does not enable them to live in a decent and proper house befiting their status and dignity. With the proposed amendment to section 22(A) of the High Court Judges (Conditions of Service) Act, 1954, this situation is expected to be remedied

I hope the Bill will receive the whole hearted support of the House.

THE VICE-CHAIRMAN (SHRI H HANUMANTHAPPA): There is one amendment by Shri Satya Prakash Malaviya.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता हूं कि :

"उच्च न्यायालय न्यायाधीश (सेवा शर्त) अधिनियम, 1954 का और संशोधन करने वाले विधेयक को राज्य सभा के निम्नलिखित सदस्यों की प्रवर समिति को सौंपा जाये, अर्थात् :–

1. श्री रशीद मसूद
2. श्री चित्त बसु
3. श्री चतुरानन मिश्र
4. श्री जगदम्बी प्रसाद यादव
5. श्री शंकर सिंह वाघेला
6. श्री बी० सत्यनारायण रेड्डी
7. प्रो० सी० लक्ष्मन्ना
8. डा० जी० विजय मोहन रेड्डी
9. श्री कैलाश पति मिश्र
10. श्री सुकोमल सेन
11. श्री सत्य प्रकाश मालवीय

और उसे आगामी सत्र के प्रथम दिवस तक अपना प्रतिवेदन प्रस्तुत करने का अनुदेश दिया जाये।"

The questions were proposed

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Now the motion and the amendment are open for discussion Shri Upendra.

SHRI PARVATHANENI UPENDRA: (Andhra Pradesh): Mr. Vice-Chairman, Sir, this Bill is a simple Bill, providing for enhanced house rent allowance for the Judges Normally we should not grudge such small benefits to the judiciary, and I have no particular comment about the amount which is now being sanctioned. But I would like to take this opportunity to give a few of my views on how the judicial system is functioning, of course, within the ambites of the Constitution and our own responsibilities here.

Sir, it is a known fact that the common man who goes to the court, at various levels, is being harassed because of the abnormal delays in dispensing justice. Whether it is a High Court or the Supreme Court, years are consumed in deciding a case. Even for listing the cases they are taking several months or years. Today, the Government's own admission, nearly one and a half lakh cases are pending in the Supreme Court, and ten times that number in the High Courts. The Judges complain that all the vacant

posts of Judges in the High Courts and the Supreme Court are not being filled in time. From the answer the Minister has given recently to a question, we find that about a dozen vacancies are there in the Supreme Court and about a hundred vacancies are there in all the High Courts. May be, I am wrong I am subject to correction Fifty That may be This itself indicates that there is something seriously wrong with our judicial systtm and its management. I do not know why so much time should be consumed or taken by the Government in filling up these vacancies When recommendations come promptly from the Chief Justices, why the Government should take so much time at its level to fill up these vacancies? I hope the Minister will answer when replying to the debate. But it is a very sorry state of affairs that lakhs of cases are pending in the courts. Something has to be done about this immediately

I am sorry to say that the Judges whom we kept on a high pedestal always, are becoming subjects of controversies also. This is an unfortunate development The sancity, which was being attached to the judicial system earlier, is being eroded gradually, and the confidence also is being eroded. I do not know whom to blame, whether we should blame the Judges or the mode of appointment of the Judges or the political masters who are alleged to be interfering with the judicial decisions and judicial functioning.

SHRI P SHIV SHANKER: That of course, is unfair. Nobody is interfering in judicial decisions.

SHRI PARVATHANENI UPENDRA: You can deny That is why I used the world "alleged"

SHRI P SHIV SHANKER: But that may be lurking in your mind.

SHRI PARVATHANENI UPENDRA: No, no "Alleged interference", I said. I did not say "positively." If it is not a fact, you can always deny. There is nothing wrong in that.

Also, the system of transfer of Judges, which has been recently introduced some time ago, is also being used to pressurise, indirectly threaten, intimidate Judges. There are Judges who are in constant fear that if a particular decision goes in a particular way, the powers that be would be annoyed and unhappy, and, therefore, they want to play safe. That is one more allegation which has been normally made by the legal circles after the introduction of this transfer system. I do not know whether this transfer system has helped the judicial quality That, the Minister will tell

In this connection, I would also point out certain observations made by the hon. Minister for Law and Justice in the course of a lecture which he gave in Hyderabad some time ago.

THE VICE-CHAIRMAN (SHRI H HANUMANTHAPPA): Mr Upendra, he has already clarified on it on the floor of the House Why do you mention that?

SHRI P. SHIV SHANKER: I have no objection, Sir.

SHRI PARVATHANENI UPENDRA: What is it? It is relevant.

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): He has clarified on it.

SHRI PARVATHANENI UPENDRA: I am quoting his own words.

SHRI P. SHIV SHANKER: I am having no objection. I will have an occasion to meet it.

SHRI PARVATHANENI UPENDRA: Personally speaking and strictly speaking, I would have myself agreed to some of the observations of the Minister. He has touched upon a number of points which I myself have been holding.

SHRI V. NARAYANASAMY (Pondicherry): The same "NEWSTIME"?

SHRI P. SHIV SHANKER: The same "NEWSTIME".

SHRI PARVATHANENI UPENDRA: But, coming as they do from the hon. Minister, somehow I take them with a pinch of salt. I do not doubt his sincerity, but I feel that there must be something else behind his comments which he made against the Supreme Court particularly.

SHRI P. SHIV SHANKER: When have you become an astrologer?

SHRI PARVATHANENI UPENDRA: The first point he made is about the elitist character of the Supreme Court Judges and I do not know whom he is blaming. It is their Government which has been in power here for the last 40 years and if they chose to appoint such judges whom he thinks are responsible for the present state of affairs or some unpopular decisions or anti-people decisions, the Government itself is to blame. One point on which I particularly agree with him ...

SHRI P. SHIV SHANKER: Don't agree with me. You never agree with me.

SHRI PARVATHANENI UPENDRA: Sometimes I said I do agree

He says, and I quote:

"Without so saying, the judiciary claims to be supreme. The power to declare constitutional amendments, legislative enactments and administrative action *ultra vires* and invalidate them is of such a comprehensive nature that, if not wisely exercised, it will put the whole mechanism of constitutional checks and balances out of gear. The power to issue writs under Articles 32 and 226 of the Constitution is of widest amplitude. It is controlled, if if at all it can be said, by the self-imposed restraint; rational approach, wisdom and national good; all of which are weak constraints over such extensive power."

I fully agree with him on this point, but tht behaviour of some of the courts and their decisions and their actions are at the instance of the ruling party which itself has taken recourse and induced the judges to overstep their limits. They have to be blamed. I do not want to go further and create another controversy here. We have been discussing it for the last four days and we have discussed about east Andhraain pending petitions in the Pradesh High Court which are purely political interest litigations. The Supreme Court has been taking credit all these years, for the last few years about the public interest litigation which it has started. We are happy at least the judges have come out of their glass towers and they are concerned about the common man. But, unfortunately, this has now overstepped that limit and even political interest litigations are being entertained by the courts as a part of the writ jurisdiction. Here I would like to quote from one opinion from Mr A.G. Noorani, on this fact. I quote:

"The public interest litigation has come to stay, none denies But in the High Court judge's case, Justice Bhagwati uttered this sound warning: We hope and trust that the High Courts of the country will also adopt this proactive, goal-oriented approach. But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activised at

the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in court."

That is what Mr. A. G. Noorani has said. I doubt how many judges are observing this dictum nowadays.

Now, Mr. Shiv Shanker has made many uncomplimentary references to the Supreme Court. He also asserted in this House that all theses remarks applied to the Supreme Court judges earlier to 1980. If I remember correctly, he said from 1980 the Supreme Court has been functioning all right in the interest of the common man. Before that he said that it was not so.

SHRI P SHIV SHANKER: Neither you have understood me properly nor you have properly read the article.

SHRI PARVATHANENI UPENDRA: May be.

SHRI P. SHIV SHANKER: I am prepared to place a copy on the Table of the House. I have got a copy. I have no objection. I will read it out myself and you also read it out.

SHRI PARVATHANENI UPENDRA: I will quote from Mr. Shiv Shanker's speech:

"Madhadhipatis like Keshavananda and Zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except the Supreme Court of India..... Anti-social elements *i.e.* the smugglers, FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court."

This is his comment. I am really glad that Mr. Shiv Shanker has developed a liking or affection for the underdog suddenly and I do not know how to comment upon this because in commenting on the courts action in one of the cases Justice Sabyasachi Mukherjee said, I quote:

"My conscience protests to me that when thousands of remedyless wrongs wait in the queue for this Court's intervention, the petition at the behest of diamond exports and dry fruit exporters, where large sums are involved, should be admitted at such quick speed."

This was a comment on the hearing of the bail application of an industrialist L M. Thapar, and that shows sometimes promptitude is shown by the Judges at the instance of some powers that be. Mr. Shiv Shanker particularly is often accused, may be unjustifiably, of influencing the Judges, I do not know But that is the common charge.

SHRI P. SHIV SHANKER: Nobody has accused me except you, that too taking advantage of this House

SHRI PARVATHANENI UPENDRA: That is one charge which is made. Wherever we go they always say that no Judge does anything without consulting Mr. Shiv Shanker. Of course, I am subject to correction, I may be contradicted and it is not a charge. But most of them consult Mr. Shiv Shanker in many of the cases whether it is in the Supreme Court or High Court.

He has also started this theory of committed Judges. In this article he also said that since they are not giving proper judgement it is open for the Government to go into the antecedents of theses people to verify their commitment and all that. If it is only a question of verification of their commitment to the Constitution, the nation's ideals, etc., there is no quarrel. But what we understand is commitment to the Congress party dictates and Congress party orders.

SHRI V. NARAYANASAMY: That is your interpretation.

SHRI PARVATHANENI UPENDRA. Yes, My interpretation. Because of such committed Judges' there is delay in appointments also. They are always apprehensive that if they appoint a correct man or somebody, he may later become difficult and he cannot be managed And, therefore, several times the files are returned. Even when the Chief Justice recommends, even when the Prime Minister or Chief Minister recommends again the files are being recirculated. Therefore, it is very necessary to evolve a proper system for appointment of the Judges itself. That is very essential. The present system is full of loopholes and gives undue leverage to the establishment to pack and choose, to bypass, to ignore, to supersede even qualified people and appoint their own people. Therefore, there must be a foolproof system In some countries, they are elected, in some countries, there are committees to appoint. Therefore, some system has to be evolved so that the correct people are appointed to the judiciary. This is very essential I do not know and Mr. Shiv Shanker will definitely clarify because some of his remarks at least against the Supreme Court, are really in the nature of contempt of the court. If he were an ordinary citizen he would have been hauled up by now for contempt of the court But I do not know whether he has deliberately used this occasion to make this speech, whether it is his concern for the common man and the improvement of the judicial system or he used it as pressure tactics so that they will be afraid because of his bombardment, hereafter to be careful and bow to his dictates I do not know but it is not a healthy sign to attack the Supreme Court, the highest court in the land, to deride and cast doubts on its integrity

Whatever it is, I feel, a thorough review of our judicial system is necessary

Mr Shiv Shanker has been in charge of these legal affairs in the Centre, directly or indirectly. In whichever Ministry he had been, has always been involved in the judicial matters in the Centre for the last 7-8 years. Therefore I feel that the time has come for him to think of radical changes in the judicial system so that the system will improve and the common man and the people of India will benefit. Thank you.

THE VICE-CHAIRMAN SHRI H. HANUMANTHAPPA). I requested the Members to kindly confine themselves to the Bill The point is if we have to go by the Business Advisory Committee *(Interruptions)*.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM (Tamil Nadu). He has taken less time.

SHRI SATYA PRAKASH MALAVIYA: What was the urgency for this?

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): For everything you want to rise. What can I do?

SHRI SHANKARRAO NARAYANRAO DESHMUKH (Maharashtra): Mr. Vice-Chairman Sir, I rise to support the Bill. Though the Bill is very small in nature, its reflections are far and wide. It refers to the very important section of judiciary and we all know judiciary is an important organ of the Constitution of India. It is kept independent throughout its working, recruitment, etc.

Sir, the Bill seeks to provide a lumpsum to a judge who is not given any official residence and that fixed sum Rs 2500. Sir, the economic conditions of the judges are not very satisfactory, as we all know. They have to face so many problems in their everyday life and their conditions in everyday life are not very satisfactory As we all know if we want to take a house on rent, first we have to arrange for a Pugri or a deposit that too

without a reason and then the rent. Such are the conditions prevailing in the country regarding the taking up of houses on rent So if a judge requires a better house for his living better accommodation for his everyday life, then he has to approach somebody and when he comes through somebody for securing a rented house and if somebody obliges him, naturally, the judge remains under his obligation And, later on, he has to return that in one way or the other This is temptation which creates corruption. Corruption starts from here only. Therefore, while considering this particular class of Judges of the judiciary throughout the country as such, we must give them a secured status in the society We must see that they are free from wants. If you take the case of a Judge who is tansferred, he is not only without a house but there is no arrangement for the education of his children. Are they free from wants? Can we say they are leading a very satisfactory life? Therefore, in order to get all these facilities for their everyday life, they are required to oblige somebody in one way or the other and this is how the temptation comes in Therefore, my suggestion is give them better status in life; make them free from wants so as to enable them to function properly and apply their mind to judicial principles Nowadays, the spheres of law have enlarged very much Twenty years ago, the spheres of law, or some call them the species of law, were very limited Now, many new systems have come into being New technologies have come And all sorts of new legislations, legislations even in respect of water and air, are coming A Judge is expected to consider them concentrate on them, to see the provisions of the legislations and enactments and deliver the judgment. For all these purposes, concentration of his mind is necessary. When could he concentrate? If he has better living conditions When could he concentrate? When he is free from wants. And that is exactly what is not happening Our hon Minister of Law comes from the same walk of life, law. Therefore, I would request him, I would call upon him, to give directions to all the States Governments to fall in line with the principles that are laid down by the Central Government I know the conditions prevailing in Nasik Except the District Judge, nobody has got any house accommodation and every Judge is under the obligation of somebody There the problem starts. They are under constant orders of transfer. They are under constant difficulty in respect of the education of their children. So, this thing could be borne in mind Only enhancing of the allowance will not do. You have given them a lump-sum of Rs 2500 I am surprised. Only today some of my friends have come from Bombay. They have told me just this morning that the land price at Nasik is Rs. 1000 per sq. metre So, what is this? Either you give houses for Judges or give them reasonable allowances and make them deliver judgments properly How can a Judge deliver judgements properly unless his wants are provided for? Housing is the basic problem for all Government officials It is particularly so for Judges, because from Judges you expect laying down of morals for a secured society which is expected under the Constitution of India When you expect that a Judge should lay down certain morals for a secured society, to be followed by the society, should we not expect that the Judge should be in a good position to live the everyday life? Thereafter I want to bring to your notice a very strange thing which is happening in rural areas. In mofussil areas a judge is at the mercy of a sub-inspector of police. He asks the sub-inspector of police "Mr. Sub-transport? My Sub-Inspector will you see transport? Mr Sub-Inspector will you that I get a proper house anywhere through you?" And immediately the police officer can do it because the police officer manages most of the things in some way or other better than the judicial officer Such is the condition An ordinary sub inspector of police helping a judicial officer—is it not a strange phenomenon in rural

[Shri Shankarrao Narayanrao Deshmumkh]

areas? A very strange phenonmenon. Not only that. The sub-inspector of police arranges for the eduaction of the judge's children, for their transport for going to pictures, for everything. I am telling you the particular truth I bring this to the notice of this august House for a particular purpose to show that the judiciary is the most neglected. When a panchayat samithi president or chairman can be provided with a vehicle, why not a judge who has to do duty fifteen days at one place and fifteen days at another? I often travel on buses and what a horrible condition it is When you consider giving house rent allowance to a High Court judge, should you close your eyes in regard to the district level judicial officers? Certainly not because, under the Constitution judiciary functions as a whole. Therefore, I request the honourable Minister to call upon the State Governments to understand the problems of the district level judicial officers and give them their basic necessities; otherwise, they will not be able to lay down for a secured society those morals which are expected of them under the Constitution

DR. R K PODDAR (West Bengal): Mr. Vice-Chairman, there is nothing to oppose in this Bill which deals with a small matter. The Minister wants to give Rs 2500 to a High Court towards his house rent allowance But I wonder what the rationale is in trying to satisfy judges in this ad hoc and piece-meal manner Only a few months ago their salaries were raised to Rs. 8000. Why did not the Government remember at that time itself that the judges would have to live in houses? In any case, the question is that this Rs 2500 is not much Here in Delhi there are hotels where you have to spend that much amount just for one night; So I don't grudge this provision.

Then there are other judges also—district judges, sub-judges, etc.—some of whom draw less than what a Class IV employee in LIC earns.

I undesrtand that the average pay of a lift operator in the LIC is about Rs. 2,500/- per month and some of the Judges earn less than that. I do not know why the Government is not thinking about this aspect The point is that the Government is trying to solve these problems in a piecemeal manner They want to have the best people as High Court Judges and they want to compensate them in salaries, pensions, house rent allowance, etc. But the whole society is crumbling now Dou you want the best people only for the posts of Judges? You should also want the best people to work as professors, as scientists, as doctors and as engineer. A few months ago, there was a strike for about three months or so in the Delhi University by the professors. Unless you solve the social problems, socio-ecnomic problems, in an equitable manner, this sort of piecemeal legislations would not lead you anywhere. You give something to the Judges on the one hand and, on the other, you also give the threat of punishment. I will not say 'punishment' but some threat you give, some kind of a threat Just a few months ago, the Chief Justice of the Calcutta High Court was transfered to Bombay and the Chief Justice of the Punjab and Haryana High Court was transfered to Calcutta That Chief Justice was appointed just for one day in the Punjab High Court; So, in one way, you try to satisfy them by offering them high salaries and high perks and, in another way, you give them the threat of transfer; The Government is actually wanting to engender sycophancy among the Judges so that they do not go against the Government and they are allowed to enjoy their benefits I think the Government should give a serious thought to the judicial system as a whole.

Sir, there are 23 lakhs of cases pending in the different courts in India and about sixty-three lakhs of litigants are awaiting justice. Just by giving more salaries to the Judges or by filling up the vacancies, does the Govenrment think that the whole

judicial system will be allright? Does the Government think that the people will get justice? I heard from one of my friends, eminent in the judiciary, something about an unemployed youth who went to the court for justice He was the ninth man in a panel of nine persons to be appointed by the Indian Oil Corporation. The Indian Oil Corporation appointed eight persons from that panel and this person was excluded. Therefore, he went to the court. He lost his case The Indian Oil Corporation also contested it. The Division Bench was in favour of this man and ordered that he should be bsorbed against a future vacancy. But the powerful and mighty Corporation went to the Supreme Court just to debar the unemployed youth from having a position in the Corporation: Now, the case has been pending in the Supreme Court for eight or nine years and the man, this unemployed youth, does not have the money to pay for his second class fare from Haldia to Delhi. So, you see, the poor man is being harassed by the mighty and the powerful It is because having more money, they can appoint very powerful lawyers just to frustrate the expectation of justice by the underprivileged section. So, all these issues have to be tackled by the Government You have to see how the judicial system can be improved Can you not nationalise the whole judicial system? Sir, they say that they are for socialism. But, in the socialist countries, the judicial system is nationalised. Just as the health services are nationalised, the judicial system also can be nationalised. Why cannot the judicial system be nationalised? If that is done, the lawyers and the judges will all be paid from the national exchequer and the people also can approach them easily.

The last point that I want to make is with regard to the allowances and pay of the Judges. But they have to be paid by the State Government. And most of the States have deficit budgets. So I would request the Central Government to make some extra grant to the State Governments on this account so that they can suitably pay to the Judges.

With these words, I conclude.

SHRI V. NARAYANASAMY: Mr. Vice-Chairman, Sir, I support the Bill piloted by the hon. Minister of Law.

Sir, this is a simple Bill which replaces an old provision. Sir, the entire judicial system in our country has undergone a radical change. To be a Judge is a difficult task It is also quite complex. The Judges have to go through the facts in different cases and they have to judge the mater according to the well settled law and the Statute. As I already said, the duty of a Judge is to judge the matter not only from the point of view of the Statute Book and the precedent but also from the point of view of the changing social and economic customs in the country. The recent development that has taken place in the matter of rendering justice is a good example, because to render justice to a person who has no source of income or who is not in a position to pay a huge amount to the lawyer means actually rendering justice to the poor. This system was introduced three or four years back and it brought a radical change in the thinking of the judge, not only from the judicial point of view but also from the point of view of social economic and political changes that have taken place in the country.

Sir, we find that in the High Courts there are vacancies to be filled up. The hon. Minister has replied in the House that as on 10th October 1987 about 50 Judges have to be appointed in different High Courts and 10 Judges have to be appointed in the Supreme Court It is also a fact that there is a backlog of cases. Cases have been pending for decisions for years together. The process adopted by the Government in getting a recommendation from the Chief Justice of a particular High Court, then from the Chief Mi-

[Shri V Narayanasamy]

nister of that particular State and then making their own enquiries and then coming to a conclusion is a lengthey process I agree with Upendraji who says that there should be a time frame process in this matter, because we are already burdened with lakhs and lakhs of cases which are pending in courts and litigants are waiting for judgments By delaying appointments of Judges we will be further adding more cases in the pending list. Therefore, I would like to urge upon the Minister to evolve a system either by appointing a Comission as we have of U.P.S.C., or by having the Supreme Court Judges or the High Court Chief Justices to decide appointment of Judges. That system may be evolved. Of course, I quite agree with the hon Minister that the antecedents of a particular judge who is to be appointed should be throughly gone into. The Judges perform a sacred task. The duty of the Judges is sacred He has to decide a case on its merits Therefore, the appointment of Judges should be made in a time-frame process so that the pending cases can be eliminated.

Sir, in the last session we have increased the salary of the High Court Judges The Judges are also very happy. Now we are increasing the House Rent Allowance of the High Court Judges according to their status so that they may survive independently without depending upon any body. I am of the opinion that filling up of the posts of High Court Judges will not solve the problem. The posts of officers who have to help the Judge in deciding the matter should also be filled. There are so many posts lying vacant. They are the posts of subordinate judicial officers at the State level. This point should also be looked into.

Another point is about the salary of Judges at the lower levels, apart from the Supreme Court and High Court Judges There is disparity in the salaries of a District Judges and the City Civil Court Judge in Delhi and in other Union Territories I have got a personal example of the Judicial Officers working in the Union Territory of Delhi and the Union Territory of Pondicherry. Their salaries at various levels, i.e Sub-Judge, District Judge and District Magistrate are not on par with the Judges of the same level in Delhi. I had written as letter to the hon Finance Minister. The hon. Finance Minister did not give any justification for this disparity in the salaries of these Judges The hon. Minister is going to reply to the queries raised by Mr. Upendra. The hon Member has said that the High Court has become a place of bribe earners and so on and so forth

PROF. C. LAKSHMANNA (Andhra Pradesh) The Supreme Court and not the High Court

SHRI V NARAYANASAMY: I am sorry. It is the Supreme Court He said that under the protective cover of law those persons are evading punishment and they are getting their place in he society. We will have to do it in the right spirit. Those persons get the protection of law and they are living in the society Those persons should be eliminated from the society That is my interpretation. The hon Minister would have said that *(Time bell rings)* *(Interruptions)* The hon. Minister is gong to answer the ponints which I have raised or which Mr Upendra has raised. I am giving my interpretation

SHRI V GOPALSAMY (Tamil Nadu): We are not objecting to it We want to know what is your point. kindly elaborate it

THE VICE-CHAIRMAN (SHRI H. HANUMANTHAPPA): Don't answer the interruptions

SHRI V NARAYANASAMY Sir, I will say that by the procedure they are getting protection and those persons who are to be punished by the

law are not getting punished. Therefore, there is no mistake, there is nothing wrong in the hon Minister's version at the time of the conference. I would like to say on this aspect that better conditions are to be made available for the High Court Judges so that they will be able to discharge Judeship in a fair manner and also protect the interests of the litigants in the society Thank you, Sir.

SHRI ALADI ARUNA *alias* V ARUNACHALAM: Mr Vice-Chairman Sir I rise to extend my support to the Bill moved by the hon. Minister.

[**The Vice-Chairman (Shri Jagesh Desai)** in the Chair]

Sir, there is no area of difference among the Palriamentarians regarding the higher emoluments, exemptions, concessions and facilities to the Judges of High Courts and the Supreme Court. The Judges who do not avail the facility of official residence under this Amendment Bill are entitled to get to the extent of Rs 2,500 p.m. in lieu of prevailing higher rentals. Sir, considering the income and status of the doyen of the Bar to maintain the independence of the judiciary, it is quite essential to protect the economic security of the Judges

Sir, our Constitution is very specific regarding the qualifications, allowances, service conditions, age limit, etc. of the Judges In the province of service also our founding fathers have incorporated necessary Articles so as to allow them to function without fear or favour. Articles 121, 126, 127, 141, 142, 143, 144, 211 and 260 are considered to be the bulwark for the independence of judiciary

Sir, supremacy of our judiciary has been well established under Article 141 We are quite aware that there will no constitutional democracy without effective judiciary he controversy between the Judiciary and the Legislature is not a new one We are aware of the fact that the judgement of Justice John Marshall in 1803 in Barbary Vs Madison case created controversy in the History of judiciary. In 1937 President Roosevelt raised criticism against the supremacy of judiciary and he severely condemned Supreme Court for saying that he is not able to implement the New Deal. Sir, what was alleged, what was criticised what was charged by President Roosevelt has been repeated by our hon Minister in a different phraseology against our Supreme court Sir .

SHRI V GOPALSAMY Are you justifying it?

SHRI ALADI ARUNA *alia* V ARUNACHALAM. That is a different thing. Our Minister is alleged to have said that anti-social elements smugglers FERA violators, bride-burners and reactionaries have found their haven in the Supreme Court. Sir, the speech of our hon Minister is highly emotional, provocative and irritant. But he has delivered it with a definite design; there is no difference of opinion about that I am not in a position to criticise or justify the allegations But out of anxiety and thirst for jurisprudence I would like to ask the hon. Minister as to how Judges are responsible for this state of affairs While they take oath, they express allegiance to the Constitution and not to the Legislature, not to the Executive, and not to the party in power. Only they express their allegiance to the Constitution. They are accountable to the Constitution. Our Minister is very particular about the accountability of the Judges of the judiciary They take the oath of allegiance to the Constitution. They are accountable to the Constitution So, when we frame the law, if our law is defective, our law has loopholes then an offender would easily escape through these loopholes or utilising the defects for which the Judges are not at all responsible

[Shri Aladi Aruna *alias* V. Arunachalam]

Sir in such circumsances my assessment is that either we surreptitiously make a law for their escape or we lack wisdom in making the law. Sir, we cannot question the confidence of the courts in any event The courts are considered as temples of justice. Judges are like sacred priests. Our Law Ministry is a Board of Trustees and the Law Minister is the head of the Trust Board. If the head of the trust board criticises the temple, then the entire system will collapse *(Interruptions)*. Sir, even though the supremacy of the judiciary is accepted, the controversy regarding the implementation of the decisions of the court or the degree of the court or the finding of the court is there and these can be implemented only with the cooperation of the executive and the legislature As Presiden Jacson sarcastically remarked, John Marshal made the decision let him enforce he said But the cooperation of the executive is necessary for the implementation of the judgement. Even though in the United States there is controversy and there was controversy between the judiciary and the executive nobody is allowed to create any dangerous situation in the implementing area. Therefore, cooperation from our area is necessary. Co-operation from executive and legislature to the judiciary is quite essen tial *(Time bell rings)*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now the last point.

SHRI ALADI ARUNA alias V. ARUNACHALAM: No Sir. You have to give me some more time. So far I was speaking only about the principles. Now I have to come to the points *(Interruptions)*

Sir, it has been said that if justice is delayed, it means justice is denied. Sir, if you go through the number of cases pending in the Supreme Court up to the end of 1985, they number 1,56,986. As far as High Courts are concerned, the number of pending cases up to 31-12-1985 is 13,75,790. If you add the current figure, I hope it will exceed 15 lakhs in various High Courts. Sir, what is the cause of all this delay? Who is responsible for this delay? My reply is that it is the policy of the Government in appointing judges. That is an important point, because now the Government selects the panel and asks for the panel from the Chief Justices of the High Courts and one panel from the State Governments

SHRI P. SHIV SHANKER: No, no, panel from the .

SHRI ALADI ARUNA *alias* V ARUNACHALAM They are recommending to you.

SHRI P. SHIV SHANKER: It emanates from the Chief Justice.

SHRI ALADI ARUNA *alias* V ARUNACHALAM. Anyway, you are accepting the list from the State or the Governor sends the list after getting the panel from the Chief Justice of the High Court.

SHRI P. SHIV SHANKER: Comments of the Chief Minister

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: You kindly correct me if I am wrong. The Chief Justice of the High Court prepares the panel and then the Government sends

SHRI P. SHIV SHANKER: No, no.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM That is my understanding. Afterwards the Governor sends the panel to you Right or wrong, you kindly tell me because in our State..

SHRI P. SHIV SHANKER: May I explain this so that the hon Member may not expatiate further to create confusion?

Sir, there is a memorandum of procedure that has been settled about the appointment of judges That memorandum of procedure is in terms of

article 217 of the Constitution so far as the High Court Judges appointment is concerned. With regard to the Supreme Court Judges, it is article 124. Under that, even though the Constitution itself says that the President shall appoint in consultation with the Chief Justice and the State, what often happens is that because of this memorandum of procedure that has been evolved, the Chief Justice sends the names He addresses to the Chief Justice of India, with copy to me and copy to the Chief Minister. That is how it goes Then the Chief Minister has to have his comments, his views on that. Then he refers it to the Governor The Chief Minister after making up his mind and also after having the views of the Governor, sends it to the Law Minister. In the Law Ministry, in the Ministry of Justice, after we process it, we refer it to the Chief Justice of India. Thereafter I take my view and then advise the Prime Minister and the President. This is how it happens. It is possible, because he has in mind his own State, under this procedure itself, even the Chief Minister does not agree with the names recommended by the Chief Justice He can then suggest his own names but he must seek the comments of the Chief Justice for those names also before he makes them available to me, along with the views of the Governor.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM I am also saying the same thing and you are repeating it in different words. What I said has been repeated by you.

What I want to say is that in the matter of the Chief Jusetice of the High Court being appointed from other States, it causes so cany controversies. They are at the mercy of the Centre. They never give due respect to the State Government. They are creating controversies and they become champion of controversies in the non-Congress-I States, the States which are under the control of a party other than the party ruling at the Centre. For example, there were two cases in our State. In preparing the panels, a particular community was recommended in the first panel also ..

SHRI P. SHIV SHANKER: It is not fair that in the absence...

SHRI ALADI ARUNA *alias* V ARUNACHALAM: But I am not mentioning anybody.

SHRI P. SHIV SHANKER: But you said 'a particular community' obviously it means something.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: We have to expose; but I have not mentioned anyname or any community. You can infer anything. That is a different matter but I am not mentioning about any community. Out of five vacancies four lawyers recommended belonged to a practicular community. It was strongly opposed by our Govenrment. We are not against any caste but we will not allow any casts to dominate other casts. I would appeal to the Government, to the hon. Minister to give up the policy of appointing Chief Justices from other States. How can a judge, who hos no knowleage about the language, the culture, the habits and the behaviour pattern of the people, give proper judgements? How can a judge who has no knowledge about the lega luminaries of the local Bar can form an opinion about the merit of a candidate while preparing a panel Therefore, appointment of judge from other States should be avoided The appointment of judges from othe States to a particular State is not onl anti-federal, it is against the interes of the State Government. You wi agree, there are three wings: Legisl ture. Executive and the Judiciary. L gislature is under the control of tl Chief Minister; Judiciary is under tl control of the Chief Justice, and tl Executive is under the control of t Governor. Governors and Chief Ju tices are appointed from other Stat Do you mean that this is what a se government should be known as?

[Shri Aladi Aruna *alias* V Arunachalam]

it serving any federal principal? That is why I appeal against appointing judges from other States and this practice must be given up once and for all

Sir, in the U.K., the judges are nominated by the Lord Chancellor. In the U.S.A., they are nominated by the President with the consent of the Senate The hon Minister is very particular about the accountability of the judges. That is why I want that appointment of the judges of the Supreme Court should be ratified by Parliament and in respect of the judges of the High Courts, the appointments should be ratified by the Assembly concerned. Unless this is done, there is no chance of controlling or making the judges accountable to the Legislature. Thank you

SHRI M S. GURUPADASWAMY (Karnataka) Mr. Vice-Chairman, Sir, I have no quarrel with this Bill. I welcome it I believe, the conditions of service of the judges should improve and improve decisively at all levels because it is one of the prerequisites to safeguard the independence of the judiciary. Good emoluments and other facilities are necessary to ensure their freedom.

Sir, Whenever we discuss the judiciary, we should remember that we are working in a federal set-up under a written Constitution. Those who formulated our basic document had taken care to see that for a federal set-up like ours, the sepration of powers should be respected as far as possible We have three wings, three limbs of the Government; executive judiciary and legislature. All these three wings have got to function within the four corners of the Constitution. In legal terms, all these agencies, limbs, instruments, are accountable to the Constitution of India My friend has also talked about the accountability of the judiciary in his address at a seminar about which there was a reference. We have to remember that we function under the Constitution of India. If we have to make any change in respect of any limb we have got to change the Constitution of India. We should not, and cannot, just tamper with the respective spheres of the three limbs They are based on checks and balances. It is a very old concept which has been evolved and the Constituion-makers had taken inspiration from various sources of authority while framing the Constitution The danger in a modern set-up is not from the judiciary but from the executive. Let us understand this. The executive by its very nature, tries to encroach upon the powers and functions of the legislature on the one side and the judiciary on the other. The problem of the present situation is, how to contain the executive, the overgrowth of the executive, how to prevent executive despotism to safeguard the democratic set-up in this country? Since the Constitution was formulated, if you look at the entire gamut, you will appreciate there is a tremendous growth of the executive power in this country which has been detrimental to the free functioning of the legislature and the judiciary. That is the problem There may be a natural growth of the executive power but in our country there has been constant and deliberate attempt made by the executive to restrain and restrict the operations of the legislature and the judiciary. Parliament, as you know, is the creator, the executive the creature. Today the executive is the creator and the Parliament is the creature in acual practice

In the judicial field also, with all respect to my friend Shiv Shankerji—he is more knowledgeable than me. I straightway, concede that—as a student of political history I say, there is a progressive erosion of judicial independence in this country. There is very rapid and undesirable erosion of power of the judiciary and the legislature. We have to guard against the onslaught of the executive. My friend

took pains in his speech in Hyderabad to point out that the judicial class is not a good-behaviour class In his own way he admonishes them for not following the wishes of the executive.

SHRI P SHIV SHANKER: Will you please quote ..

SHRI M.S. GURUPADASWAMY: I would like you to go through the entire speech Your entire thrust.

SHRI P SHIV SHANKER: Please quote where I have admonished the judiciary for not obeying the executive because this is what you have said. Please quote.

SHRI M S. GURUPADASWAMY: I am not going back on my word. The whole thrust of your speech, pardon me for saying, is that the judiciary is not accepting fully endorsing fully the policy of the Government which you think is progressive You talk of the elite class; you talk of the masses Who created the elite class in this country? Is it the judiciary? Is it the Parliament? Or is it the executive and its policies? My complaint against Mr. Shiv Shanker is, you have created the elite class, the monopoly class. You are more responsible than the judiciary and the Parliament. And you blame the judiciary, perhaps in future Parliament also! You create a class structure and blame others for trying to interpret the laws which you make here. Judiciary should not be made a scapegoat. He should be very careful. He was a judge himself, a lawyer and a judge. I think he was not taking much care when he delivered that speech That is all I can say He did not take much care, in his emotions or perhaps in his zeal. He thought the judiciary is at fault and has got to be mended

My friend here quoted Roosevelt. Do you know what Roosevelt did? In the same way you do it He said: "Judiciary is reactionary, is conservative It is not radical enough to appreciate the hopes and aspirations of the people." So he packed the judiciary with his own men That is how he did it. With a view to packing your own men in the judiciary, you cannot advance this argument What you are doing is, you want to pack judiciary with your own men by saying that the present judiciary is very conservative, is not radical enough Are you radical? Are you progressive? I want to ask this. I would like the judiciary to be recruited on the basis of merit and talent. And the Constitution is there to protect all of us. If there is something wrong in the Constitution, let us amend it Why blame the judiciary for it?

Sir, it was Montesquieu whom he has quoted in his speech who said long back: "If there is a combination of two wings of government, tyranny is inescapable. And if there is overdoing by one limb of the government, that is the beginning of tyranny". If there is a combination of the executive and the Legislature, it will be a tyranny if there is a combination of the judiciary and the executive, it will be a tyranny. The third limb will become helpless. Therefore Montosquieu said that there has got to be separation of powers. This principle has been accepted by our constitution-makers.

For heaven's sake, to protect the independence and freedom of the judiciary, the sanctity of the judicial system, do not employ appointment, promotion and transfer as instruments to intimidate the judiciary That you are doing today. Don't do this as an instrument of power to browbeat the judicial system here. You have done far more harm to the judiciary now than at any time. There is a progressive erosion of the independence of the judiciary. You tempt them also After retirement you appoint them to various offices You make them Governors, you make them Lokayukts, you appoint them as chairmen of commissions of inquiry They are also human beings. You corrupt them That is my charge No retired Judge should be appointed to any commission. You appoint existing Judges as chairman

[Shri M. S. Gurupadaswamy]

of commissions of inquiry. If you appoint retired judges of the High Courts or the Supreme Court, they would be under your obligation. To that extent your inquiry will be vitiated; it will not be impartial and fair However, that will be a very bad weapon in your hands to tempt the judiciary. Those people who are retiring will be expecting something from you, from the executive It is a very dangerous practice to make a Judge, while he is a Judge or, after he retires look to the executive for various facilities, for various benefits That is a wrong practice that you have been doing

May I say, therefore, Sir, while endorsing the views of other friends that justice should be cheap and quick, that you should fill up all the vacancies? There should be automatic filling up of vacancies. You should plan it You are talking so much about the judiciary. Why don't you talk about yourself, your own performance Why are you waiting so long to fill up the vacancies? For whose benefit? People have not told you not to fill up the vacancies. Why do you do that? You should fill up the vacancies in the Supreme Court and the High Courts.

Sir, I entirely agree with my friend here that no transfer of Judges is necessary It should be accepted by the Government. There should be no transfer of Judges because there is the problem of language and there may be other difficulties involved. like local customs. Local customs they must understand. For some time more —I am not saying it as a principle but as a practical necessity—these transfers have got to be stopped. I think an evaluation is necessary. You have been transferring these Jdlges, particularly the Chief Justices. How they are working and whether the new system is working better than the previous one. I think, Parliament should be told.

Sir, I do not like to take much of your time. But, I have no quarrel with the Bill. I go along with the Minister so far as this Bill is concerned. I want healthy conditions and facilities to be created for the Judges so that they may function more independently, more freely. Thank you.

श्री केशव राम द शुक्ल (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, आपने मुझे इस विधेयक पर बोलने के लिए समय दिया इसके लिए मैं आपका आभारी हूं । इस उच्च न्यायालय न्यायाधीश (सेवा की शर्तें) (संशोधन) विधेयक, 1987 का मैं समर्थन करता हूं । यह बहुत ही साधारण संशोधन है जो बहुत विवादास्पद नहीं है । इस विधेयक के द्वारा उच्च न्यायालय के उन न्यायाधीशों को जो सरकारी निवास का उपयोग नहीं करते है उन्हें आवास भत्ता जो पहले साढे बारह परसेंट वेतन का था जिसका मूल अधिनियम की धारा 22(क) की धारा (2) में प्रावधान था उसको इस संशोधन के द्वारा संशोधित करके अढाई हजार रुपये दिया जा रहा है । महोदय, आवास की जितनी विकट समस्या है वह बड़ी गम्भीर समस्या है। यह निर्विवाद है कि हमारे जजेज को ज्यूडिशियरी के अधिकारियों को अपना निष्पक्ष, निर्भीक और स्वतन्त्र न्याय देने में उनकी माली हालत आड़े न आवे । इसका उचित ध्यान रखना आवश्यक है और मैं अपने कानून मंत्री जी का धन्यवाद करूंगा कि उन्होंने इसको दृष्टिगत रखते हुए पिछले दिनों एक अमेंडमेंट रखा जजेज के वेतन में वृद्धि की और अब उसमें जो यह खामी रह गयी थी उसको दूर करके आवास की फेसिलिटी दी गयी है । अगर उनको आवास की फैसिलिटी नहीं मिलती है तो उनको जो 12.50 प्रतिशत वेतन पर भत्ता दिया जाता था उसको बढ़ाने के लिए यह विधेयक लाया गया है और उसे 2500 कर दिया गया है । इसमें कोई विवाद का विषय नहीं था। हमारे विरोधी दल के लोगों ने इसका जो विरोध किया है वह सुपरफ्लुअस विरोध जैसा है क्योंकि इस सदन में हर आदमी को समता है कि जो चाहे बोल दे, इसलिए लोगों ने शिर्ते-

वेंट, इरिलेवेंट सब चीजे कही है । मैं उन पर नही जाना चाहता हू । मैं तो केवल अपने को कन्फाइन करूगा कि यह जो कदम उठाया गया है यह बहुत सुन्दर है, स्वागत योग्य है । यह जुडीशियल आफिसर्स की स्वतत्रता के लिए, ताकि प्रलोभन के द्वारा या डर के द्वारा या अन्य प्रकार से उस पर आघात न पहुचे, इस दृष्टि से इस खामी को दूर करने के लिए यह विधेयक लाया गया है । इससे वे निश्चित रहेंगे, उनको आवास की समस्या का सामना नही करना पड़ेगा । यह एक बहुत अच्छा कदम है, इससे न्यायाधीशो को राहत मिलेगी और उन्हें न्याय करने मे दिक्कत नही होगी ।

महोदय, हमारे यहां की जो न्यायालयीय व्यवस्था है वह संविधान के अन्तर्गत एक निष्पक्ष और स्वतत्र व्यवस्था है और हमारे जजेज ने हमारे जुडीशियल आफिसर्स ने निर्भीकतापूर्वक और समतापूर्वक उसका पालन किया है । वे इसके लिए प्रशंसा के पात्र है ।

विरोधी दल के मेरे एक मित्र ने, जो इस समय नही है, जजेज के ऊपर बड़ा आक्षेप लगाया क्योंकि प्रेशर पड़ता है, मैं उनको बता देना चाहता हूं कि हमारे भारतवर्ष के जजेज ने यह सिद्ध किया है कि वे निर्भीकतापूर्वक निष्पक्षता के साथ और समतापूर्वक अपना जजमेंट देने मे, निर्णय देने मे किसी प्रकार से कम नही है और उन्होने संविधान की हर प्रकार से रक्षा की है । यह उनको मालूम होना चाहिए कि हमारी महान नेता, इंदिरा गाधी जी जब प्रधान मत्री थी तो उनके विरुद्ध इलाहाबाद हाईकोर्ट के एक जज ने फैसला दिया था । हमारे मध्य प्रदेश मे भूतपूर्व मुख्य मत्री के विरुद्ध आसवनी काण्ड मे एक जज ने फैसला दिया था । अभी कुछ रोज पूर्व आंध्र प्रदेश के जजेज ने वहा के मुख्य मंत्री श्री एन० टी० रामाराव के खिलाफ निर्णय दिया है, अपनी फाईंडिंग्स दी है । इन सबसे क्या हमारे जजेज की निष्पक्षता और स्वतंत्रता जाहिर नही होती है । एन० टी० रामाराव के खिलाफ दे दिया इसी बात के लिए कहे यह ठीक नही है । बल्कि पोलिटिकल प्रेशर मे पड़े बिना, चाहे कितना बड़ा हो, उच्च पदस्थ हो, उसके पक्ष या विपक्ष मे समतापूर्वक निर्णय देते है, इसमे दो राय नही है । इसलिए यह कहना कि पोलिटिकल प्रेशर डाला जाता है, यह बिल्कुल गलत है । मैं इसका विरोध करता हूं । यह असत्य है ।

अग्रेजी मे एक कहावत है कि जस्टिस डिलेड इज जस्टिस डिनाइड । हमारे यहा हाईकोर्ट और सुप्रीम कोर्ट मे पेंडिंग केसेज की संख्या बहुत ज्यादा है । इसका कारण क्या है ? हमने यह प्रतिज्ञा ली है कि हम देश की जनता को सस्ता और शीघ्र न्याय देगे, सुलभ न्याय देगे । इसके लिए हम कमिटेड है । हमने जनता से यह वायदा किया है और इस दिशा मे हम कदम उठा रहे है लेकिन जो हमारा कदम है वह बहुत मन्द है, मैं इसकी ओर मत्री जी का ध्यान आकर्षित करूंगा और कहूगा कि वे इस पर ध्यान दे ।

हमारे यहां हाईकोर्ट और सुप्रीम कोर्ट मे मुकदमो की सख्या इतनी ज्यादा क्यो बढी है जब हम इसकी गवेषणा करते है, विवेचना करते है तो हमको ऐसा मालूम होता है कि इस समय हर क्षेत्र मे अनेकों कानून बने है और बनते जा रहे है, इन सबकी व्याख्या करना और उनके अनुसार निर्णय करना ही न्यायालयो का काम है लेकिन यह बहुत बड़ा काम है । इस समय लोग अपने अधिकारों के प्रति ज्यादा सतर्क हो गये है, सचेष्ट हो गये है, हर आदमी मुकदमा दायर करता है और इसी से मुकदमों की सख्या बढ़ रही है । इससे यह जाहिर होता है कि हमारे देश की जनता को इस न्यायालयीय प्रक्रिया में कितनी आस्था है और वह न्यायालयों मे अपने अधिकारो की रक्षा पाने की आशा रखती है, और इसीलिए इतने अधिक मुकदमे है, तो इनका निराकरण करना आवश्यक है । किस तरह से हम इनको कम कर सकते है, यह विचारणीय विषय है ।

मैं तो आंकड़ों को नहीं जानता, लेकिन उपेन्द्र जी ने तो कम बताये । उन्होंने

[श्री केशव प्रसाद शर्मा]

बताया कि सुप्रीम कोर्ट में डेढ लाख मुकदमे पेंडिंग हैं और हाई कोर्ट मे पद्रह लाख है । नारायण स्वामी जी ने बताया कि 30 लाख तो हाई कोर्ट मे है और दस लाख सुप्रीम कोर्ट मे है । कुछ भी हो, लेकिन सख्या है, यह निर्विवाद सत्य है कि पेंडिंग केसज बहुत ज्यादा हो गये है ।

तो इनके लिए मै अपना सुझाव दूगा कि इनको समाप्त करने के लिए, डिसपोज आफ करने के लिए, मुकदमो का फैसला करने के लिए, इनका निर्णय करने के लिए हमको जजेज की जो खाली जगह है, उनको तुरन्त भरना चाहिए, इसमें देरी नहीं करनी चाहिए । इससे लोगो मे असतोष की भावना पैदा होती है ।

तो मैं मंत्री जी से निवेदन करूगा कि वह इस दिशा में कदम उठायें और जल्दी से जल्दी जितनी वेकेन्सीज है, उनको पूरा करें ।

इसके अलावा अब यह वेकेन्सीज कितनी है, यह भी मैं सुझाव दूगा कि इनको भरने की कृपा करें क्योकि इनसे भी काम नही चलेगा । मुकदमो की संख्या को देखते हुए, हमको ज्यादा से ज्यादा जज और उसके लिए उनकी संख्या को भी बढाना पडेगा । तो इसलिए संख्या बढ़ाने की भी कोशिश करे जिससे कि यह मुकदमे जितनी जल्दी हो सके उनको खत्म करें । यह मेरा सुझाव है ।

इसके अलावा, हम देखते है कि हमारे यहा बडी-बड़ी स्टेट्स है । उनके मुकदमों को समाप्त करने की दृष्टि से और लोगों को सुलभ, सस्ता और शीघ्र न्याय दिलाने की दृष्टि से हमारे यहा जितनी खंडपीठें है, उनको बढ़ाना होगा । जसवंत सिंह आयोग रिपोर्ट आ चुकी है । अभी वह स्टेट्स में अध्ययन के लिए भेजी गई है ।

मै यह निवेदन करूंगा कि हमारे यहां मध्य प्रदेश में हाई कोर्ट जबलपुर में है । उसके पहले हमारे यहा मध्य प्रदेश में चार खंड थे--विध्य प्रदेश, मध्य भारत, महा कौशल तथा भोपाल, चारो मे अलग-अलग हाईकोर्ट थे । जब मध्य प्रदेश हाई कोर्ट बनी, तो हाई कोर्ट जबलपुर में चला गया और यह कहा गया कि और जगहो मे हाई कोर्ट नही होगा, लेकिन प्रेशर के कारण हाई कोर्ट की ग्वालियर में खडपीठ रखी गई तथा इन्दौर में खडपीठ रखी गई । रीवा और शायद महाकौशल को उससे वंचित कर दिया गया । वहा पर एजिटेशन हो रहा है कि हमको वह खंडपीठ दी जाए ।

तो उनकी मागें जायज है । तो मै कहना चाहूंगा कि रीवा और महा कौशल की बिलासपुर या रायपुर जहा भी उचित समझा जाए, एक खडपीठ दी जाए जिससे मुकदमो की सख्या कम करने मे मदद मिलेगी और वहा पर केसेज जब जायेंगे, तो मुकदमे कम हो जायेंगे ।

इसी तरह इधर उत्तर प्रदेश मे खडपीठ की बात हो रही है । वहा भी खंडपीठ दी जाए । इसमे जो हमने जनता को कमिट किया है, वायदा किया है कि हम जनता को सुलभ और शीघ्र न्याय देगे, उसमें सहूलियत होगी । इसके लिए यह नही है कि ज्यादा जजेज होंगे, तो हमारा पैसा ज्यादा लगेगा । भारत सरकार के पास पैसे की कमी नही है कि हम जनता की मागो को पूरा न करे ।

तो मैं यह सुझाव दूगा कि माननीय मंत्री जी को कि ज्यादा खंडपीठ कायम करे और ज्यादा से ज्यादा संख्या जजों की कायम करें जिससे मुकदमों का तसफिया हो जाए । इस तरह से यह तसफिया होगा, तो लोगो मे एक आस्था बनेगी, जैसा कि मैंने बताया कि लोगो मे हमारे न्याय के प्रति एक आस्था बनी है और वही कारण है कि हमारे यहा मुकदमे ज्यादा है । तो इसके लिए यह एक तरीका है । अब बहुत से लोगों ने कई चीजें कही है, मैं उन पर नहीं जाना चाहता हूं और मुझे यह कहा गया है कि आप बहुत कम बोलिये, तो मैं थोड़े में यह

कहना चाहता हूं कि यह जो विधेयक लाया गया है, यह बहुत ही उत्तम विधेयक है और उसके लिए और भी अगर जजेज के इमान्युमेंट्स, यानी वेतन, भत्ता वगैरह के लिए जितना ज्यादा से ज्यादा गवर्नमेंट कर सके उतना ही अच्छा है क्योंकि उनको हर तरह से निश्चित होकर जनता को न्याय देने में सहूलियत मिले ।

इन्हीं शब्दो के साथ मैं इस विधेयक का स्वागत करता हूं और समर्थन करता हूं ।

श्री अश्विनी कुमार (बिहार) : माननीय उपसभाध्यक्ष जी..... **(व्यवधान)**

उपसभाध्यक्ष (श्री जगेश देसाई) : इस के पहले बिल के लिये एक घंटा तय किया गया था और उसके मुताबिक उसको खत्म किया. इसके लिये मैं सब मैम्बर्ज का बहुत आभारी हूं । मगर यह बिल कम से कम एक घंटा और... **(व्यवधान)**

श्री सत्य प्रकाश मालवीय : यह कोई जरूरी तो नही है कि यह आज ही पास हो । इसको टलवा दीजिये अगले सैशन के लिये ।

श्री राम अवधेश सिंह (बिहार) : यह इतना महत्वपूर्ण बिल है कि शायद कोई इतना महत्वपूर्ण बिल इस सैशन में आया नही ।... **व्यवधान** इस पर तो दो दिन बहस होनी चाहिये ।

उपसभाध्यक्ष (श्री जगेश देसाई) : वह बिजनेस एडवाइजरी कमेटी तय करती है । दो घटे तय किया है उसमें आप की पार्टी के भी प्रतिनिधि थे । आप ऐसी बात मत करें ।

श्री राम अवधेश सिंह : आप कुर्सी मे है तो आप थोडा बढा दीजिये । हम सब लोग आपका धन्यवाद करेगे ।

श्री अश्विनी कुमार : माननीय उपसभाध्यक्ष महोदय मै आपका बडा विशेष स्नेहपात्र हू कि जब भी मै बोलने के लिये खड़ा होता हू तभी आप टाइम की घंटी सुना देते है । मैं आपका आभारी हू कि आपका मेरे लिये स्नेह है लेकिन इतना मैं कहूंगा कि मुझे अपनी बात कहने का अवसर दिया जाये । सबसे पहले मैं निवेदन करना चाहूगा कि अभी मेरे पूर्व के माननीय सदस्य जिन्होंने अपना भाषण दिया उन्होंने भाषण में एक बात कही है कि विरोधी दल के लोग "बक" रहे थे । यह "बक" पार्लियामेन्ट्री शब्द है या नही है इसको आप जरा देख लीजिये । अगर यह "बकना" शब्द अनपार्लियामेन्ट्री हो तो इसको निकाल दीजिये ?

उपसभाध्यक्ष (श्री जगेश देसाई) : ऐसा नहीं बोला ।

श्री अश्विनी कुमार : ऐसे बोला है और मैंने इसको नोट किया है । जो अभी मा० सदस्य बोल रहे थे कि विरोधी दल के मदस्य बक रहे थे । आप रिकार्ड देखिए । मै रिकार्ड देखने के लिये कह रहा हूं ?

THE VICE-CHAIRMAN (Shri Jagesh Desai): I don't think he has said it. If he has said like that then it will be expunged.

श्री अश्विनी कुमार : मैने तो निवेदन किया है । उस समय मैंने उनको रोका नही ।

उपसभाध्यक्ष (श्री जगेश देसाई) : शुक्ल जी ऐसा बोलने वाले है ही नहीं इसलिये मैं नहीं मानता ।... **(व्यवधान)** ठीक है अगर होगा तो निकाल देंगे ।

श्री अश्विनी कुमार : उपसभाध्यक्ष महोदय जो हमारे विधि मंत्री बिल लाये हैं उसमें कोई दो मत नहीं है कि इस माध्यम से उन्होंने एक अवसर प्रदान किया है कि विधि व्यवस्था पर चर्चा करके हम अपने विचार व्यक्त कर सकें । पता नही योजनानुसार या बिना योजनानुसार उन्होने स्वय बहुत अच्छा भाषण देकर विधि व्यवस्था पर विचार करने का अवसर दे दिया है जिसकी सब माननीय सदस्यों ने चर्चा की हैं वह उन्होंने थ्योरी दे

[श्री अश्विनी कुमार]

दी है जिसके आधार पर उनके विचार सबको पता लगे है कि उनकी क्या इच्छाये है क्या आकाक्षाये है और उसको लेकर एक चर्चा प्रारम्भ हो गई है। जो उनको सुविधायें दी जा रही हैं उसका मै समर्थन करता हू परन्तु जब कभी बहुत चर्चा हो रही थी कि न्यायपालिका मे बहुत अधिक समय लग रहा है। मै आपसे यह निवेदन करना चाहूगा कि पिछले साल जजो के वेतन वृद्धि का बिल लाया गया था और इस साल किराया वृद्धि का ले आये, यह क्या कार्यपालिका की क्षमता के उपर विश्लेषण नही है कि 6 महीने पहले वह क्यो नही सोचती है कि यह काम कर सकते है और सदन का इतना समय क्यों बर्बाद किया गया इसके लिये कि फिर से तीन घंटे चर्चा हो।? आप कह रहे हैं कि चर्चा क्यो हो रही है ? अगर उसी समय यह बात आ जाती तो अच्छा रहता। मै केवल इतना ही जिस्ट देना चाहता हू कि मंत्री महोदय जरा अपनी कार्यपालिका की क्षमता देखे कि वह इस प्रकार मे कितनी सक्षम है ? अभी चर्चा हो रही थी कि ला कोर्ट में केसेज मे विलम्ब हो रहा है और अभी जो माननीय सदस्य बोले उन्होने कहा कि यह हमारी स्वतन्त्र न्याय-पालिका है इसलिये लोग वहा मुकदमे ले जा रहे है। उनको उसके प्रति विश्वास है। मैं उनकी बात का समर्थन करते हुए दूसरे ढंग से अपनी बात कहना चाहूगा कि आखिर कोई भी व्यक्ति न्यायपालिका के पास क्यो जाता है उस समय जाता है जबकि कार्य-पालिका उसके ऊपर अन्याय करती है एग्जीक्यूटिव उसके ऊपर आघात करती है और एस०पी० डी एम० या और लोग उसकी बात नही सुनते है और वह उनसे अपने बचाव के लिये वहा जाता है। केसेज ज्यादा बढ़ते जा रहे है उसमे एक लक्षण यह भी है मंत्री महोदय को सोचना पडेगा कि क्या देश में जहां-जहा उनकी कार्यपालिका है, पुलिस है और भिन्न-भिन्न डिपार्टमेन्ट है उनके अत्याचार, अनाचार और व्याभिचार तो बढते नही चले जा रहे हैं ? मैं निश्चित कहूगा कि उनके कारनामों के रिएक्शन मे लोग कोर्ट मे जाते है। आज कोर्ट में जाना बडा सरल है नहीं है काफी मंहगा सौदा है। यह तो अभी सुप्रीम कोर्ट ने पब्लिक पटीशन लेकर कुछ थोड़ा सा सरल किया है। परन्तु आज लोग मुसीबत मे कोर्ट मे जाते हैं। विशेष उल्लेख मे बहुत से केसेज आते है कि इस प्रकार के अनाचार हो रहे है, अत्याचार हो रहे है। लोग क्या करें ? लोग हमारे पास आते है और हम सदन में रखकर अपनी बात खत्म करना चाहते है। परन्तु इसी के साथ मै कहूंगा कि जजेज के बारे में सोच रहे है, न्यायपालिका के बारे मे सोच रहे है तो सरकार जो आज की कोर्ट फीस है, जो कोर्ट के प्रोसीजर है, जो उसके सारे पैरा-फर्नेलिया है, उसका सरलीकरण करके कुछ काम करना चाहेगी जिसमे कि न्याय-पालिका का अच्छा काम हो सके, इसको ओर मै ध्यान आकर्षित करना चाहूगा। दूसरी बात की बहुत चर्चा हो रही है कि केसेज बहुत पैंडिग है। मेरे प्रश्न के उत्तर मे मुझे जो उत्तर मिला उसमे इस सत्र मे बताया गया कि लगभग 15 लाख केसेज हाई कोर्ट मे और 1 लाख 70 हजार केसेज सुप्रीम कोर्ट मे पेंडिग है और इन पेंडिग के साथ ही एक और बड़ी विशेषता है।

उपसभाध्यक्ष महोदय, कि पाच साल से अधिक निलम्बित केसेज लगभग 2 लाख 27 हजार है, दस साल से अधिक निलम्बित केसेज लगभग 1 लाख हैं और अब केसेज बढ़ गये है जनसंख्या बढ़ गई है मुकदमे बढ़ गये है, जजो की संख्या बढ़ाई जाये। पिछले साल सरकार ने सुप्रीम कोर्ट के जजों की संख्या बढ़ाई, परन्तु बढ़ाने के बाद दुर्भाग्य का विषय है कि हमारे देश के अन्दर इस प्रकार के दस जज नही मिले है, 10 वकील नही मिले है, हाई कोर्ट के जज न

मिले हैं, जिनको सुप्रीमकोर्ट का जज नियुक्त किया जा सके ।

श्री सत्य प्रकाश मालवीय : मिले हैं, लेकिन पोलिटिकल फिलोसफी के नही हैं . . .

श्री अश्विनी कुमार : अभी मंत्री महोदय सारा वर्णन कर रहे थे कि जज की नियुक्ति का क्या प्रोसिजर है, स्टेट हाईकोर्ट के चीफ जस्टिस से प्रारम्भ होकर चीफ मिनिस्टर से, गवर्नर से ला-मिनिस्टर के पास केस आता है । मैं कहना चाहूगा मत्री महोदय से, मेरी जानकारी के हिसाब से आज 43 जगह खाली है, हाईकोर्ट में, सुप्रीम कोर्ट मे, उसमे से पाच जगह सन् 1982 से खाली है, क्या पाच साल मे पाच जजों की नियुक्ति आन्ध्र प्रदेश मे संभव नही हो सकी, सन् 1984 से दो जज गुजरात मे बहाल नही हो सके, जैसी मेरी जानकारी है । 1984 से चार जज इलाहाबाद हाईकोर्ट के नियुक्त नहीं हो सके है । आन्ध्र प्रदेश के बारे में तो कहा जा सकता है कि वहां विरोधी दल की सरकार है, लेकिन गुजरात और उत्तर प्रदेश मे तो उसी दल की सरकार है, जिसकी केन्द्र में सरकार है तो इस प्रकार से गुजरात और पंजाब में भी 1985 मे जजो की जगह खाली है । महोदय वास्तव मे इसमें सोचने का विषय है और मै मंत्री महोदय से कहना चाहूगा कि अपने गिरेबान् में डालकर कार्यपालिका जो इसकी नियुक्ति करने का महत्वपूर्ण अंग है, उसको देखे ।

महोदय, जैसा मेरे मित्रों ने कहा, कम्युटेड जजेज की बात हो रही थी कि उन्ही की नियुक्ति की जायेगी जो हमारी विचार धारा के है । कौन सी विचारधारा, मैं प्रश्न पछना चाहत हूं. विचारधारा—कांग्रेस पार्टी की विचारधारा, तेलुगु-देशम की विचार-धारा, सी पी एम की विचारधारा, बी० जे० पी० की विचारधारा या विचारधारा भारत के कस्टीट्शन की ?

दूसरा, हमारे प्रदेशों में और केन्द्र मे भिन्न-भिन्न दलों की सरकार है, उनकी थोड़ी-बहुत आइडोलोजी डिफरेण्ट है । आज सबेरे ही एक माननीय सदस्य ने आरोप लगाया कि पश्चिमी बंगाल में जो नियुक्तिया हो रही है, कम्प्युटेड के आधार पर हो रही है, वह गलत है । क्या केन्द्र सरकार इस प्रकार के जजों की नियुक्तियो मे पक्षपात करके अन्य राज्यों को भी प्रोत्साहन देगी कि सब अपन-अपने दलो के लोगों को आगे करें । इसलिये मेरा कहना है कि केन्द्र की सरकार बड़ी है, प्रधान मत्री का एक बड़ा विशेष स्थान है और वह जो परम्परायें, जो आदर्श यहा से निर्मित करेगे, वह सारे देश में जायेंगे । इसलिये जो एक संविधान के प्रति है उसके नियमानुसार करें ।

अगली बात मैं यह कहूंगा कि कब कौन जज रिटायर कर रहा है इसकी पहले से जानकारी होती है कि अमुक-अमुक दिन को वह रिटायर कर रहा है । इसी साल अभी और भी जज रिटायर कर रहे है 1988 मे, तो इसके बारे मे पहले से क्यो नहीं सोच-विचार कर रखते कि इतने जज रिटायर हो रहे है हम उनके लिये पैनल बना कर रखें । जैसे-जैसे कोई जज रिटायर होता जाये, दूसरा आप नियुक्त कर सकते है । ऐसी व्यवस्था आप रख सकते हैं कि नहीं रख सकते । यह मै जानना चाहूंगा । मेरा सुझाव है कि पहले से अगर पैनल रहे, तो उससे आसानी रहेगी, पुरानी नियुक्तियो को तो आप करें; लेकिन आगे जो जजो की जगह खाली हो रही है, उसके लिये विचार करके पहले से पैनल रखें ताकि जगह खाली होते ही उनमें से नियुक्ति की जा सकती है ।

महोदय, खाली नियुक्ति का प्रश्न नहीं है, कुछ जगह जो एक्टिंग जज है । राजस्थान में देख लीजिये, एक्टिंग चीफ जस्टिस दो साल से वहा है, न तो उनको चीफ जस्टिस का स्थान दिया जा रहा है और न नियुक्ति की जा रही है ।

[श्री अश्विनी कुमार]

एक और नई परम्परा पिछले कुछ सालों से चली है, चीफ जस्टिस के ट्रांसफर की, जिससे भिन्न-भिन्न राज्यों के चीफ जस्टिस दूसरे राज्यों में जाते है। जहा तक मेरी जानकारी है राजस्थान का कोई भी चीफ जस्टिस किसी अन्य राज्य में नही है, बल्कि राजस्थान मे भी एक्टिंग चीफ जस्टिस काम कर रहा है, उनको जगह नही दी जा रही है। मेरा यह कहना है कि इसके बारे मे विचार करना जरूरी है, यह विचार का विषय है। इसके क्या कारण हैं, यह मंत्री महोदय बताने का प्रयत्न करेंगे तो बड़ी कृपा होगी।

यह चीजे जब तक आप ठीक नहीं करेंगे इसके स्तर को नही उठाएंगे काम नही चलेगा। आज जुडिशरी के बारे में कल्पना है कि यह एक स्वतत्र न्यायपालिका है। परन्तु जो व्यवहार में देखा जा रहा है, उसमे बहुत सी चीजे नीचे आ रही है और जैसा मैंने पहले कहा कि मंत्री महोदय ने अपने हैदराबाद के भाषण में जुडिशरी के ऊपर बहुत कुछ बात कही मैं उन्ही का एक उदाहरण देना चाहता हूं। उन्होंने जमीदारी एबोलीशन बिल की बात कही और आरोप यह लगाया कि जमीदारी बिल को न्यायपालिका ने रद्द कर दिया और उसी में उन्ही के शब्दानुसार यह है कि जब दोबारा बिल पास करने की बात आई तो उन्होंने स्वय स्वीकार किया कि, "वी हेड लास्ट द पोलिटिकल बिल टू पास।" यह किसका दोष है और कौनसी बाधाएं आएंगी यह कल्पना होना चाहिए। माननीय शिवशकर सरीखे व्यक्ति ला मिनिस्टर है। एक-से-एक बड़े विद्वान जजेज रहे है जिन्हे कि सब प्रकार का अनुभव है। साथ ही ला मिनिस्ट्री मे बडे-बडे विद्वान जजेज बैठे है, उनको अगर कल्पना नही है तो मैं कहना चाहूगा कि उनको सोचना चाहिए कि इसमे से क्या लेकुना निकाल सकते है। मैं कहना चाहता हू कि कानून जल्दी में बनते है और फिर न्यायपालिका मे जाते है। वहा से नीचे भेजे जाते है और फिर सशोधन होते है। इसलिए यह सोच-विचार कर किया जाना चाहिए। परन्तु उधर सोचा-विचारा नही जा रहा है। अभी मेरे एक मित्र महोदय ने कहा कि जज जो रिटायर हो जाते है हम उनको प्रोत्साहन देकर, प्रलोभन देकर न्याय-पालिका को भ्रष्ट बनाने का काम कर रहे है। मैं यह नही जानता कि यू एस एस० आर० मे कौनसा न्यायपालिका का सिस्टम है। वह सिस्टम तो यहा लागू नही हो सकता। हमारे यहा तो इंग्लैंड और अमेरिका हर दृष्टि से आदर्श माने जाते है। जहा तक मुझे जानकारी है अमेरिका के अन्दर अगर कोई व्यक्ति 10 साल जज रह जाता है तो उसके बाद उसे कोई पद नही दिया जाता और उसको जितनी सेलरी मिलती थी उतनी पेंशन मिलती है। मत्री महोदय कमिटेड जूडिशरी की बात कर रहे है। मैं तो कह रहा हूं कि जजेज को इलेक्शन कमीशन का चैयरमैन बनाकर, भिन्न-भिन्न पोस्ट्स देकर, गवर्नर बनाकर जो भेजा जा रहा है, यह जजेज को भ्रष्ट करने का तरीका है। उसके बाद हम कहते है कि भ्रष्टाचार फैल रहा है।

उपसभाध्यक्ष महोदय (श्री जागेश देसाई): अब खत्म कीजिए। ग्यारह मिनट हो गए है।

श्री अश्विनी कुमार: मैं एक-दो मिनिट मे खत्म कर दूगा। मैं एक-दो महत्व के विषयों पर और बोलूगा। एक महत्व के विषय की ओर आपका ध्यान आकर्षित करना चाहूंगा। मुझे व हाईकोर्ट्स, विशेषकर पटना हाईकोर्ट का अनुभव है कि जो जजेज वहा नियुक्त होते है उन्ही के बेटे, भाई, भतीजे वहा आकर वकालत करते है। तो जब कि को लेकर वे आते है तो तुरन्त जमा हो जाएगी या रिट दायर हो जाएगी तो मेरा सुझाव यह है कि जब सरकार सारे विषय पर विचार कर रही है जिनके बेटे, भाई जिस हाईकोर्ट मे वकालत करते है उसके बाहर ऐसे जजेज नियुक्त करने के बारे में आप सोचेंगे क्योंकि यह एक भयंकर भ्रष्टाचार

तरीका है और उसमे से जज के पास जाता है कि नही, यह कहना तो कठिन है परन्तु उनके बेटे जो कल ला कालेज मे आए है आज उनकी हजारो, लाखो की प्रैक्टिस शुरू हो जाती है । इस तरह उनकी प्रैक्टिस जमने लगती है और कल को दो साल, पाच साल बाद जब आप जजेज के लिए नाम खोजना शुरू करते है तो वही आते है क्योकि उनका बाप जज रहा, उनका चाचा जज रहा । जिन्होने कि बाप के नाम भतीजे के नाम पर जमानत कराकर लाखो रुपए कमाए वह फिर जज बन जाते है । कल को वे जज बनकर क्या करेगे । उनका क्या सिद्धात होगा । उसके लिए शिवशकर जी ने कहा कि हमने ट्रासफर आफ जजेज कर दिया है । परन्तु ट्रासफर आफ जजेज के बारे मे जैसा कि मेरे अन्य मित्रो ने कहा भावना उनकी अच्छी रही होगी परन्तु सरकार उसे अपने हाथ मे धमकाने के लिए उनसे अपने काम कराने के लिए एक डंडा बनाकर रखती है ।

अन्त मे मै इतना ही कहूगा कि जजेज के लिए जो कुछ किया जा रहा है वह उचित है ?

श्री पी० शिवशंकर : आपने रामायण की सारी कथा कह दी ?

श्री अश्विनी कुमार : रामायण तो आपने टी० वी० पर ला दी है । आपने हैदराबाद मे रामायण शुरू की हमने तो कमेंटरी की है । उसमे भी हम ज्यादा नही कर रहे है । मेरा तो इतना ही कहना है कि सरकार के विचार मे यह एक अच्छी कल्पना आ गयी है । न्यायपालिका को स्वतंत्र रहना चाहिए । कल को सरकारे बदल सकती है । देश मे जैसा परिवर्तन आ रहा है उसमे अगर न्यायपालिका निष्पक्ष और स्वतत्र रहेगी तो कोई भी सरकार बदले, कोई भी दल मेजारिटी मे आये, न्यायपालिका एक नियंत्रित रूप मे देश को आगे ले जायगी । मै निवेदन करना चाहूगा कि आज का जो सत्तारूढ़ दल है वह चाहे जब तक सरकार मे बना रहे लेकिन कालातर मे देश की परिस्थितियो मे परिवर्तन आने वाला है और बहुत से राज्यो मे परिवर्तन आ गया है । आज देश के 14 राज्यो में आपकी सरकार नही है । तो क्या यह देश के लिये उचित नही होगा कि हम ऐसी परपरा डाल कर जाये कि आने वाली पीढ़ी ऐसा न कहे कि हमने देश को आगे ले जाने का मार्ग अवरुद्ध कर दिया है ।

We should have a committed judiciary, that is, a judiciary committed not to a party but committed to the Constitution and to the integrity and welfare of India.

इन शब्दो के साथ आपको फिर धन्यवाद देता हू ।

उपसभाध्यक्ष (श्री जगेश देसाई) : राम अवधेश सिह जी, अब आप बोलेगे । और मै 7 मिनट के बाद घटी बजा दूगा । उसके बाद भी आप तीन मिनट बोल सकते है । आपकी पार्टी का पूरा टाइम केवल 3 मिनट का है, इसलिये दस मिनट मे ज्यादा मै आपको आधा सेकिड भी नही दूगा । मै यह बात अभी से बोल देता हूं ।

श्री राम अवधेश सिह : माननीय उपसभाध्यक्ष जी, इस बिल के माध्यम से हमे भारत की मौजूदा न्यायपालिका के स्वरूप, उसके कार्य करने की विधि के बारे मे इस सदन मे बहस करने का मौका प्राप्त हुआ है और मै समझता हू कि अब यह बहुत उचित समय है बहस करने का । अभी तक जितनी बहस हुई है उसको मैने बहुत ध्यान से सुना है । बहस का सारा तत्व यह था कि न्यायपालिका निष्पक्ष और निर्भीक हो । इसी पक्ष पर बहस हुई । लेकिन उसको निष्पक्ष बनाने के लिये कोई ठोस, कारगर बात भारतीय समाज व्यवस्था के सदर्भ मे नही हुई है । कैसे यह निष्पक्ष रहेगी इस बात को देखना है । यहा हिन्दुस्तान मे जज हो या चीफ जस्टिस हो या चीफ सेक्रेटरी हो या लेजिस्लेटर हो या मत्री

[श्री राम अवधेश सिंह]

हो, वह पैदा होता है जाति मे, बढ़ता है जाति मे, सोता है जाति में, मरता है जाति मे और मरने के बाद भी रहता है जाति मे । यह एक सामाजिक सच्चाई है । अब जिस तरह से सतही बहस हुई उसमें सैद्धान्तिक बात कि न्यायपालिका कार्यपालिका और विधायिका के बीच मे संतुलन रहे, तो यह नही हो सकता है जब तक कि इस बात के लिये कोई ठोस आधार नही तैयार किया जायेगा । मैं बहुत दुख के साथ कहना चाहता हू कि संविधान की धारा 124 जिसमे सर्वोच्च न्यायालय के जजों की नियुक्ति का प्रावधान है और जो शर्तें है और धारा 217 मे हाईकोर्ट के जजो की नियुक्ति का प्रावधान है और जो शर्तें है और धारा 233 में एडीशनल सेशन जजों की नियुक्ति का प्रावधान है, इन तीन सविधान की धाराओ का भरपूर दुरुपयोग किया गया और ऐसा बनाया गया है कि आगामी जितनी व्यवस्था की और ही न्यायपालिका उन्मुख रहे । कोई प्रगतिशील काम सरकार करना चाहती है तो इस तरह के जज बैठे हुए है न्यायपालिका मे कि जैसे साप कुंडरी मारे बैठा रहता है और किसी को घुसने नही देता । वह घर की रखवाली करता है तो उसी तरह से न्यायपालिका में साप की तरह से लोग बैठे हुए है जो बाहर से किसी को उसमे घुसने नहीं देना चाहते है । मैं दावे के साथ कहना चाहता हूं कि भारत सरकार जांच करे और गृह मत्रालय और विधि मत्रालय जाच कराये कि कितने परिवारो का एकाधिकार न्यायपालिका पर है हाईकोर्ट के जजो के बारे मे और सुप्रीम कोर्ट के जजो के बारे मे । 300 परिवार इस देश मे है जिसका पूरा एकाधिकार न्यायपालिका पर है और वे जैसा चाहते है, वैसा कराते है ।

महोदय, मुझे बहुत दुख के साथ कहना पड़ता है कि हमारे मित्र श्री अश्वनी जी ने बहुत सही कहा ..

उपसभाध्यक्ष (श्री जगेश देसाई) : मगर आपके विचारो और उनके विचारों मे बहुत फर्क है ।

श्री राम अवधेश सिंह : बहुत कुछ विचार मिलते है हमारे । मैं आपको बताना चाहता हूं कि न्याय पाने की आजादी है, लेकिन क्या हो रहा है कि वहां पर कुछ ही खानदान के लोगो की नियुक्तिया हो रही है । जो एक बार जज बन जाएगा तो उसका साला, उसके रिश्तेदार, उसके मित्र भी बनेंगे । दर्द क्यों होता है कि एक ही जिले मे 10 साल हाईकोर्ट में कोई प्रेक्टिस करे तो वह हाईकोर्ट जज बन सकता है । 10 वर्ष हाईकोर्ट में प्रेक्टिस करेगा तो या सुप्रीम कोर्ट में करेगा तो सुप्रीम कोर्ट का जज बन जाएगा । 233 धारा के मुताबिक कोई लोवर कोर्ट मे करेगा तो ऐडीशनल सेशन जज बन सकता है । सबसे बड़ी खामी इसमें यह है कि न्यायपालिका मे चुनाव के लिए प्रतियोगिता की भी व्यवस्था है लेकिन वह केवल जुडिशल मजिस्ट्रेसी के लिए है मुसिफ के लिए है । आप सिद्धान्तत. यह नही कह सकते है कि न्यायपालिका के चुनाव मे प्रतियोगिता नही है । जहां से फासी देने का अधिकार न्यायपालिका को मिलता है वहा भी पैरवी पर नियुक्ति होती है । मैं ऐसे लोगों को जानता हूं । चार दोस्त थे, वे एक साथ रहते थे एक साथ प्रैक्टिस करते थे, एक साथ वे जुडिशल मजिस्ट्रेट की परीक्षा मे बैठे । एक जो उनमे सबसे तेज था वह हरिजन था, वह भी उसमे बैठा और वह मुसिफ मजिस्ट्रेट हो गया । दूसरा जो था मत्र के गलियारे मे और न्यायपालिका के गलियारे मे था । जिस अनुपात मे उसकी पैरवी थी, उसी अनुपात मे उनको जगह मिलनी थी । जिसकी थोड़ी पैरवी कम थी, दूसरे से वह ऐडीशनल सेशन जज बन गया । जो तेज था, जिसके लिए वे कहते है कि 7 वर्ष की पैरवी होनी चाहिए, जो पुश्तर आनर सर करता रहा वह उसके सिर पर आकर ऐडीशनल जज बन गया । तीसरा आदमी सुप्रीम कोर्ट का जज बन गया । यह है आपकी नियुक्ति की व्यवस्था । इसमे आप अपेक्षा कर सकते हैं कि न्यायपालिका स्वतंत्र रहेगी ? नहीं रह सकती है । इसमे समाज के कमजोर तबके का कोई प्रतिनिधित्व नही है । इस पर क्या सरकार नही सोचेगी ?

महोदय मैं इस सदन के माध्यम से अपने देश के नौजवान प्रधान मंत्री को कहना चाहता हूं कि न्यायपालिका में भी जनता अपना चेहरा देखना चाहती है । जैसे सरकार एक दर्पण है उसी प्रकार से विधायिका भी दर्पण है जिसमें जनता अपना प्रतिनिधित्व देखना चाहती है उसी प्रकार से न्यायपालिका मे भी जनता अपना प्रतिनिधि देखना चाहती है । मैं पूछना चाहता हू मत्री जी से वे पूरे देश मे जितने हाईकोर्ट के जज है उनमे बैक-वर्ड क्लास के लोग कितने है यह क्या आप बताएंगे उसमे आदिवासी कितने है, हरिजन कितने है, माइनारिटीज के लोग कितने है, महिलाएं कितनी है यह बताएं । हमारे जो प्रधान मंत्री है उन तक आप हमारी बात को पहुचाएं हम दर्द से बोल रहे है । अगर हम लोगों की बात नही सुनी गई तो क्या होगा कितना असन्तोष होगा यह आप जाने ।

श्रीमन् पटना हाईकोर्ट के चीफ जस्टिस के बी. एन. सिह थे । वहां क्या होता था कि सारी जातियो का जमाव होता था । रात में तय होता था कि किसमें क्या फैसला करना था । एकदम साधारण मजिस्ट्रेट के स्तर से चीफ जस्टिस का स्तर गिरा था । मुझको 31 अगस्त 1982 को और 9 फरवरी, 1983 को पटना हाईकोर्ट के सामने धरना देना पड़ा और कहना पड़ा कि इसको बदलो । भारत सरकार को हमने मेमोरेंडम दिया । उस समय संयोग से माननीय मत्री जी थे तो उनकी ट्रांसफर हुई और राहत मिली हमको । पूरे सूबे को लगा कि कुछ राहत मिल गयी । ऐसे जो चीफ जस्टिस होगे तो उनके बारे मे क्या होगा ? डा० लोहिया की तरह से निर्भीक हों निष्पक्ष हों यही हम चाहते है और सब वर्गों का उसमें प्रतिनिधित्व हो । मैं यह कहता हूं कि इस समय जो 440 जजेज है उसमे सब के सब कुछ को छोड़ कर ऊंची जाति के है । 55 फीसदी तो खाली ब्राह्मण ही है । एक जाति है जिनकी संख्या साढ़े तीन फीसदी है । (समय की घंटी)

उपसभाध्यक्ष (श्री जगेश देसाई) : आपके दस मिनट हो गये । अब आप बन्द करिये ।

श्री राम अवधेश सिह : तीन मिनट और दे दीजिए ।

उपसभाध्यक्ष (श्री जगेश देसाई) : एक मिनट से ज्यादा नही । इसी में आप खत्म करिये ।

श्री राम अवधेश सिह : मैंने ब्राह्मण शब्द कह दिया क्या इसलिए आपने...

उपसभाध्यक्ष (श्री जगेश देसाई) : मैं पहले हिन्दुस्तानी हूं । न ब्राह्मण हूं और न कुछ और ।

श्री राम अवधेश सिह : सब हिन्दुस्तानी है लेकिन मरने के बाद तक अपनी जाति में रहते है यह दुर्भाग्य है । मैं कोई जाति में नही हू । मैं हिन्दुस्तानी हूं । मैंने अपने लड़के का नाम कश्मीर अली रखा है दूसरे लडके का नाम कृष्ण कबीर रखा है और लड़की का नाम जयश्री नूर रखा है । मैं किसी धर्म को नही मानता किसी जाति को नही मानता, भगवान को नहीं मानता । (व्यवधान)... (समय की घंटी) मैं एक सुझाव देना चाहता हूं ।

उपसभाध्यक्ष (श्री जगेश देसाई) : आपका टाइम खत्म हो गया ।

श्री राम अवधेश सिह : एक मिनट में अपनी बात खत्म कर दूगा ।

मेरा पहला सुझाव यह है कि अखिल भारतीय न्यायिक सेवा की स्थापना की जाये ताकि प्रतियोगिता के आधार पर जजों की नियुक्ति की जाये । साथ ही यह भी हो कि वह 10 साल तक प्रेक्टिस में रहा हो तभी वह प्रतियोगिता में बैठ सकता है ।

दूसरे यह कि जनसंख्या के आधार पर अगर यह सम्भव न हो तो कमसे कम हर वर्ग का प्रतिनिधित्व उसमें हो ।

[श्री राम अवधेय सिंह]

पिछड़े वर्ग का प्रतिनिधित्व हो। 50 जगह हाई कोर्ट मे खाली है तो उसमे कम से कम 40 इनमे से भरी जानी चाहिये। पटना मे 13 जजेज की जगह खाली है। मै माग करता हू कि 13 मे से कम मे कम 9 जगह पिछड़े वर्ग मे से, हरिजन जाति के लोगो मे से बहाल की जाये

तीसरे यह कहना चाहता हू कि हर हालत मे मुख्य न्यायाधीश उस राज्य का नही होना चाहिए दूसरे राज्य का होना चाहिए। दो-तिहाई जज हमेशा अपने राज्य के नही होने चाहिए। अगर वे दूसरे राज्य के होगे तो जातपात नही हो पायेगा।

चौथे यह कि जजो की संख्या दुगनी बढाई जाये। जब 10 लाख से ऊपर हाई कोर्ट मे केसेज पैंडिग है और एक लाख केसेज सुप्रीम कोर्ट मे पेंडिग है तो मै चाहूंगा कि जब तक जजो की सख्या दुगनी नही बढ़ाई जायेगी तब तक ये पैंडिग केसेज कम्प्लीट नही होगे। संविधान की दुहाई मत दीजिए। अगर पिछड़े वर्गो को उचित हिस्सा नही मिला तो संविधान की रक्षा के लिए सविधान को जलाने का काम वह करेगे और उसमे हमारे जैसे लोग शिरकत करेगे।

SHRI DHARAM CHANDER PRASHANT (Jammu and Kashmir): Mr Vice-Chairman, Sir, I rise in support of this Bill which is a very simple Bill, about enhancement of emoluments of Judges There can be no two opinions about this. But, Sir, I have some points to raise There is shortage of High Court Judges It has resulted in 14.83 lakh cases pending in the High Courts and 1.63 lakh cases pending in the Supreme Court. It is a huge number. It is because of shortage of Judges in the High Court. The case of a man who goes to the court to demand justice lingers on for 10 years or more. He spends thousands and thousands of rupees in litigation. He knocks at the doors of the courts. But justice takes so long that he withdraws his case. The case is filed

Secondly a High Court Judge has to dispose of election petitions also. There are cases when a person files an election petition. His petition goes on for 5 years. In the meantime, the Assembly is dissolved and whether he wins or loses the case does not matter. The case remains in the court and he has spent so much of money on it. It is because a High Court Judge disposes of not only election petitions but other cases also that election petition lingers on. I suggest that when a High Court Judge disposes of an election petition, his duty should be confined to the election petitions only He should not deal with other case. In this way, the disposal of election petitions will be quick and speedy

There is one legal directive I would a Judge. Don't punish those who have not committed crimes though you may have to acquit those who have committed crimes. But we have seen that those who have not committed crimes have been punished That is a loophole in the judicial system which should be plugged If you don't plug this loophole, then people will not get justice.

Sir, in the lower courts also the situation is very deplorable. Judges are appointed by the Chief Justice. But there is interference by the State Governments with the result that those who do not have any merit are appointed Judges. A Judge should be appointed on merit alone. His performance as a lawyer at least for 10 years should be perfect A man who has just passed LL B and is immediately appointed as a Judge will not perform his duties perfectly according to the law A lawyer who works efficiently for 10 years as an advocate should be given a chance to work as a Judge in the High Courts or in the lower courts. Justice should not be delayed Justice should be done speedily to the persons who approach the courts. If they are

not given justice, then their confidence in the judicial system will be shaken. Thank you.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Gopalsamy. Only 5 minutes.

SHRI V. GOPALSAMY: Mr Vice-Chairman, Sir, I know that the time at my disposal is very short. I will confine myself to the Bill. Originally the House Rent Allowance was 12-1/2 per cent of the basic pay. At that time the basic pay was Rs. 3500/-. Now the basic pay of the High Court Judges including other perquisites is Rs. 8000/- and above. It has been raised from Rs. 3500 to Rs 8000 On that basis, the House Rent Allowance comes to about Rs. 1000.

Sir, now the Government have introduced a new Bill under which the house rent allowance is raised to a consolidated sum of Rs. 2,500. It is understood that this rise to a consolidated sum of Rs 2,500 will be paid to the Judges who are occupying their own premises from the date on which this condition is notified. Since the pay has been raised much earlier and given effect to from 1st April, 1986, it is requested that the house rent allowance of Rs 2,500 also may be given effect, that is retrospective effect from 1st April, 1986 because when there was an increase in the pay of the Central Government employees, that was given retrospective effect from 1st January, 1986. When the Central Government employees have been given such a facility of retrospective effect, I hope and I would request our hon Minister to consider this request to give a retrospective effect Even at this moment, I hope our hon Minister would definitely consider this request and give retrospective effect from 1st April, 1986, and that would be a welcome measure

Sir, the strength of the Judges of the Madras High Court is 25, *i.e.* 21 Permanent Judges and 4 Additional Judges. As on date, the strength of the Madras High Court is only 18. By March, 1988 the Chief Justice would be retiring. As on date, the vacancies are 7 and by 15th of March, 1988, the vacancies will be 8. And I do not want to go into the plight of the people due to the delayed justice and all those things. So, I would request the hon. Minister to fill up the vacancies as early as possible taking into consideration various aspects because, recently, a controversy also has arisen in Tamil Nadu between the Law Minister and the Chief Justice. I do not want to go into that. While taking into consideration the whole background, it is also necessary to keep in mind the socio-economic conditions and at the same time the need to uplift the people coming from the down-trodden, from the backward sections. That aspect also should be taken into consideration That is my request.

Sir, the Judges of the High Courts of other States like Kerala and Andhra Pradesh are enjoying the full facilities of phone calls whereas in the case of the Judge of the Madras High Court, the phone facility is reduced to 700 total calls, inclusive of free calls per month, except in the case of the hon. Chief Justice. Sir, it is ridiculous to note that earlier to the introduction of this new system, even the first three senior Judges, otherwise called the Portfolio Judges, were enjoying 800 free calls, but when the charge payable for each of the call is increased, the Judges are made to pay from their pocket for extra calls Sir, the facility of free calls is a status symbol. So, when some of the Judges in the High Courts of some States are enjoying the facility of free calls, why should there be a discrimination against the Judges from some other High Courts? This anomaly also should be removed

SHRI P. SHIV SHANKER: You must address it to Mr. Aladi Aruna.

SHRI V. GOPALSAMY: We are

[Shri V Gopalsamy]

helpless. That is why I am addressing it to you and because you are friendly with the Government, you could take it up with the State Government also (*Interruptions*). You are the mediator now. I would request our hon. Shri Shiv Shanker to take up the issue with the State Government though it is a petty matter.

SHRI M. S. GURUPADASWAMY: He wants your good offices.

SHRI V GOPALSAMY: Sir, this discrimination should go. It is ridiculous to expect the High Court Judge to pay for the calls from his pocket. I hope the hon. Law Minister will now take up the issue with the Government.

Sir, there is one more thing which also concerns the State Government. I would request the hon. Law Minister to look into this. In other States, the High Court Judges are allowed to fly the High Court flag on their cars. This system of flying a flag on the cars of the High Court Judges was prevalent for some time in my State, in Tamil Nadu. But it was subsequently given up on account of the policy of the State Government and now the Judges of the High Court of Madras are prevented from flying the High Court flag on their cars. When the Judges of the other High Courts are enjoying such a flag facility, we do not see any reason as to why the Judges of the Madras High Court Should be deprived of this privilege. On this also I would request the hon. Law Minister, because that Government is very friendly or toeing the line of the Central Government, whatever you dictate, they dance to your tunes, to take up the issue with the State Government so that the Judges of the Madras High Court enjoy the facility of flying the flags on their cars.

With theses words, Sir, I conclude.

SHRI DARBARA SINGH (Punjab): Mr. Vice-Chairman, Sir, I want to point out only one thing. Whatever has been said by the hon. Member, the Law Minister will take care of this. But I would like to say that at the time of selection of candidates, whosoever they may be, they will be fulfilling the conditions all right, but it should ascertained that they do not have any feudalistic bias or communal or caste bias at all. This must be taken into account.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Malviyaji, five minutes.

SHRI V. GOPALSAMY: Sir, I confined myself to the time. So bonus should be given subsequently

श्री सत्य प्रकाश मालवीय : उपसभाध्यक्ष महोदय मैं निर्धारित समय में पूरा करने की कोशिश करूंगा । मैंने इस विधेयक को प्रवर समिति को भेजने का प्रस्ताव किया है । वह इसलिए रखा है कि जब संविधान बना था तो उस वक्त हाईकोर्ट जजेज की जो सैलरी थी वह 3500 रुपये रखी गई थी गत वर्ष इसको बढ़ाकर 8 हजार रुपये किया गया और अब यह प्रावधान किया जा रहा है कि यदि सरकारी आवास में हाईकोर्ट के जजेज नही रहेंगे तो प्रतिमास 2500 रुपये मकान का भत्ता मिलेगा । मेरी समझ मे नही आ रहा है कि 2500 रुपये के पीछे क्या सिद्धान्त है ? दो हजार, चार हजार या दस हजार क्यो नही किया गया ? इसीलिए मैंने प्रस्ताव रखा है । मैं अपनी बात वही से शुरू करूंगा जहां से मेरे मित्र राम अवधेश सिंह जी ने अपनी बात को समाप्त किया था । 26 नवम्बर, 1987 को अतारांकित प्रश्न संख्या 2049 के उत्तर मे बतलाया गया है कि जो अल्पसख्यक वर्ग है पिछड़े वर्ग है, अनसूचित जातियां है हरिजन भाई हैं या महिलाएं है इनकी नियक्ति के लिए सरकार तलाश कर रही है...

(व्यवधान)

श्री राम अवधेश सिंह मंत्री जी सुनिये जरा ।

श्री सत्य प्रकाश मालवीय . माननीय विधि एवं न्याय मंत्री ने जवाब दिया । I am referring to the reply given to Un-Starred Question No. 2049 on 26th November, 1987. The Hon. Law Minister replied that the Government have addressed the Chief Ministers of the States and the Chief Justice of High Courts from time to time requesting them to locate and recommend persons from the bar belonging to the Scheduled Castes and Tribes and other backward classes and minorities and women who are suitable for appointment as Judges of the High Court so that they could give them better representation in the High Courts than it is at present जो प्रश्न राम अवधेश सिंह जी ने किया था वही मेरा प्रश्न था । सरकार ने गाइडलाइंस तय कर दी है गवर्नमेंट के लिए अप्वाइंटमेंट करने के लिए कह रखा है । उसमे लिखा है कि लोकेट किया जाए ढूढा जाए हिन्दुस्तान में । तो क्या कठिनाई है ऐसे लोगों की नियुक्ति करने मे । इन वर्गो के जजो की सुप्रीम कोर्ट और हाई कोर्ट्स में कितनी टोटल स्ट्रेंथ है इन वर्गो के कितने लोग है जिसमे इसका जिक्र है । माननीय सदस्यों ने इस ओर भी ध्यान आकर्षित किया और जब अलादी अरुण अपनी बात कह रहे थे तो उन्होंने कहा कि जस्टिस डिलेड इज़ जस्टिस डिनाइड । अभी शुक्ल जी ने मध्य प्रदेश का जिक्र किया और इलाहाबाद हाईकोर्ट में जो केस पेंडिंग है उनके बारे मे यह है--

As per the information furnished by the Registry of the Allahabad High Court 79,595 cases were pending before the Court for more than five years as on 30th June, 1986.

यह निर्विवाद है कि करीब-करीब 16 लाख से लेकर 18 लाख केसेज सर्वोच्च न्यायालय और हमारे देश के जो 18 अलग-अलग उच्च न्यायालय है वहां विचाराधीन है । उसके बहुत से कारण हो सकते है लेकिन एक कारण यह भी है कि जो पद खाली है चाहे सर्वोच्च न्यायालय मे हो या दूसरे उच्च न्यायालयो मे हो उनमें सरकार नियुक्तिया क्यो नहीं कर रही है । ला कमीशन ने भी अपनी रिकमेंडेशन कर रखी है । ला कमीशन की 79वी रिपोर्ट मे जो लिखा है मैं वह पढ़ देना चाहता हू जिसको कि माननीय भारद्वाज जी जानते है अब जरा गौर से इसको वे सुन लेगे । The Law Commission of India observed in its Seventy-Ninth Report: It is our considered opinion that the *delay in filling the vacancies is one* of the major contributing factors responsible for the piling accumulation of arrears. In our opinion when a vacancy is expected to arise out of the retirement of a Judge, steps for filling up of the vacancy should be initiated *six months in advance* The *date on* which such a vacancy normally arise is always known to the Chief Justice and also to the other concerned. "It should be esured that necessary formalities for appointment of a judge, to fill the vacancies, are completed by the date on wnich the vacancy arises."

मान्यवर चीफ आफ आर्मी स्टाफ के रिटायर होने की तारीख है 6 महीने के बाद लेकिन 6 महीने के पहले ही घोषणा कर दी जाती है कि चीफ आफ आर्मी स्टाफ कौन होगा तो इनके सिलसिले मे भी क्या कठिनाई है ।

मैं इन आकडो की ओर आपका ध्यान आकर्षित करना चाहता हूं कि सर्वोच्च न्यायालय की जो सैंक्शन्ड स्ट्रेंथ है वह इस वक्त 26 है और वहा पर 10 स्थान रिक्त है । क्या वजह है कि स्थानो को भरने में इतनी कठिनाई हो रही है । दूसरी ओर जो विभिन्न हाईकोर्ट्स है उनमें सैंक्शन्ड स्ट्रेंथ है 442 लेकिन इस वक्त 50 जजेज के स्थान रिक्त है । मैं आपका ध्यान आकर्षित करना चाहूंगा . On 31st October, 1987, ther existed six vacancies in Allahabad High Court out of which five are from 15th October

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1984. In Andhra Pradesh, from where the learned Law Minister comes, there are two vacancies since 26th November, 1982. Besides, there are 3 vacancies in Andhra Pradesh since 17th October, 1987.

These are the vacancies as I said, lying vacant from 15th October 1984 in Allahabad, and from 17th October in Andhra Now I take the case of Gujarat. In the Gujarat High Court, there are four vacancies, and out of these four vacancies, two vacancies are from June 1984, one is from 7th June, 1984, and the other is from 26th June, 1984.

मैं यह जानना चाहता हूं कि इतने जो केसेज पड़े हुए है, लाखो केसेज है, न्याय लोगों को मिल नहीं रहा है तो क्या कारण है, क्या कठिनाई है कि इन स्थानों को जल्दी नही भरा जा रहा है । मैं फिर ध्यान आकर्षित करना चाहूंगा, अभी हैदराबाद मे माननीय न्याय मंत्री जी ने एक की नोट एड्रेस दिया था, उसमे बहुत सी बाते है, यह 3 दिसम्बर, 1987 के "हिन्दुस्तान टाइम्स" मे छपा है, उसमे ज्यादा जाने की जरूरत नही है लेकिन मैं एक बात की ओर उनका ध्यान आकर्षित करना चाहूगा । हमारे शिवशंकर जी ने वहा कहा :

Where do we stand? Why did the trouble arise? The basic question asked is that if the Supreme Court is not accountable to anyone, should the appointing authority look at the philosophy of judges before appointing them?"

मैं यह जानना चाहता हू कि इस फिलासफी के पीछे उनका क्या मकसद था क्या आशय था ? जब उत्तर देगे तो उसको समझाने की कोशिश करेंगे कि कल इस फिलासफी के पीछे कोई पोलिटिकल फिलासफी तो नही है क्योंकि मान्यवर, दो दिन के लिए इलाहाबाद हाईकोर्ट मे एक व्यक्ति को चीफ जस्टिस बनाया गया, एक्टिंग चीफ जस्टिस थे, रिटायर होने वाले थे और केवल दो दिन के लिए बनाया गया । इसकी क्या आवश्यकता थी ? दो दिन के लिए आप एक्टिंग चीफ जस्टिस रखते है इसका मतलब यह है कि आप न्याय के प्रति खुद न्याय नही कर रहे है । आप और क्या कर रहे है कि इतने स्थान वहा पर रिक्त पडे है और उसको जो प्रोसेस है मैं उस पर नही जाना चाहता हू लेकिन उस प्रोसेस के पीछे इतनी कठिनाई नही होनी चाहिए । जैसे कि मैंने ध्यान आकर्षित किया कि आध्र प्रदेश मे 82-83 स्थान रिक्त है, इलाहाबाद मे, गुजरात आदि मे चार-चार साल के रिक्त है । मंत्री जी इसको समझाने की कोशिश करेंगे ।

इलाहाबाद की बार एसोसिएशन ने एक प्रस्ताव पास किया था जिसकी ओर मैं ध्यान आकर्षित करना चाहता हूं :

"A meeting of the Democratic Lawyers Front and Litigants Forum held under the presidentship of Mr. S.K. Garg, Convenor, criticised and condemned the government policy regarding appointment of judges in the High Courts and Supreme Court. The speakers in the meeting strongly resented the appointment of Chief Justices in the various High Courts for brief periods, making mockery of the high office and further ignoring the approved names"

एक सज्जन थे इलाहाबाद हाईकोर्ट में वे केवल दो दिन के चीफ जस्टिस बनाये गये। मई 1987 में यह हुआ, अब हम दिसम्बर 1987 मे हैं, करीब-करीब 5-6 महीने बीत गये है, आज भी इलाहाबाद हाईकोर्ट मे एक्टिंग चीफ जस्टिस एक दूसरे सज्जन है । क्या वजह है कि इलाहाबाद हाईकोर्ट और अन्य हाईकोर्ट्स मे एक्टिंग चीफ जस्टिसेज है, रेगुलर चीफ जस्टिस को क्यों नहीं मुकर्रर करते है । दूसरा मैं इस ओर भी ध्यान आकर्षित करना चाहता हूं जो pending cases है इस सिलसिले में एक आंकडा है :

As on July 1 this year (i.e. 1987), there were 1.6 lakh cases pending in the Supreme Court. Of them, 2422 cases were as old as 15 years and 66

cases older than that, and the High Courts had about 14 lakh cases pending with them, quite a few of them 10 years old.

तो जो लिटिगेंट पब्लिक है जो लोग न्याय चाहते है अगर 15-15 साल तक 20-20 साल तक न्यायालय मे मुकदमे विचाराधीन रहेंगे न्यायालय मे मुकदमों का फैसला नही होगा, तो क्या आप इस देश की जनता के प्रति न्याय कर रहे है ?

कहा जाता है कि यह टेम्पल आफ जस्टिस है वह न्याय का मंदिर है, लकिन 15 साल हो जाते है न्याय मिल नही पा रहा है । उसके पीछे जो न्याय नही मिल रहा है, उसके पीछे सरकार की नियुक्तियों के संबंध मे दोषपूर्ण नीति भी है । आप उनकी संख्या को बढ़ाये । संख्या जितनी आपने मुकर्रर कर दी है, उसके मुताबिक जो आप नियुक्ति करें । वह भी आप नही करते है ।

तो इसलिए मेरा निवेदन यह है कि इन सारी चीजो पर पुनर्विचार कीजिए और मै पुन यह कहना चाहता हू कि जो हाईकोर्ट जजेज है सर्वोच्च न्यायालय के जजेज है या चीफ जस्टिस है, उनको सम्मान के अनुसार इस महंगाई को देखते हुए एक भले आदमी को तरह जिदगी जीने का मौका दीजिए । उनकी तनख्वाह और बढ़ा दीजिए, लेकिन मै निश्चित रूप में यह निवेदन करूंगा कि जो स्थान रिक्त हैं, जो खाली स्थान है, उनको जल्दी भरने की कृपा करे जिससे कि आदमी को न्याय मिल सके ।

अन्त मे मै अपना बात खत्म करते हुए फिर यही निवेदन करना चाहूंगा कि कम से कम इस बात की सफाई मंत्री महोदय देंगे कि जिन उच्च न्यायालयों के चीफ जस्टिस की तरफ मैने ध्यान आकर्षित किया है कि चार-चार साल, पांच-पांच साल से वहा पर स्थान रिक्त हैं, उनके क्या कारण हैं ?

क्या उनके पीछे कोई पालिटिकल रीजन है, क्या उसके पीछे यह तो नही कि ऐसे लोग नही मल रहे है कि जो सत्ताधारी पार्टी के लोग है, उनके प्रति कमिटेड नही है, क्योंकि बराबर यह आरोप लगाया जा रहा है कि वर्तमान सत्ताधारी लोग जो है, वह कमिटेड ज्यूडिशरी चाहते है ? वह चाहते है कि ऐसे लोग सुप्रीम कोर्ट मे, हाईकोर्ट मे पहुंचे, जो संविधान के प्रति नही, बल्कि सत्ताधारी पार्टी के प्रति प्रतिबद्ध हों ?

इन्ही शब्दो के साथ मै इस विधेयक पर अपनी राय व्यक्त करता हू ।

SHRI P. SHIV SHANKER: Mr. Vice-Chairman, Sir, I must thank the hon Members at the outset. Almost all members have been pleased to support the Bill. But while supporting the Bill, various hon. members have been pleased to make diverse observations in regard to the judicial system itself. It is these observations, I think, which call for an answer In certain respects, I have also to put the record straight so that no lurking suspicion or misunderstanding prevails.

One of the points which has been raised by hon. Members is about the vacancies not being filled up in time. I would like to bring just one aspect in connection with this to the notice of the hon House. The President, for the purpose of appointment of High Court Judges or, even for that matter, appointment of Supreme Court Judges, has to consult several Constitutional authorities In the case of High Court Judges, there is more than one Constitutional authority. They have to be consulted. Often, it so happens that there is divergence of opinion. Knowing the judicial system itself and based on the experience that I have gained as the Law Minister- first, for two years from 1980 to 1982 and then since July, 1987—I would say that the Central Government, particularly, the Law Minister, endeavours to see that as far as possible consensus emerges in the names. It is a trial which has

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to be made. This trial is with an objective that a particular authority does not feel let down. This process involves quite a good time I have seen in many cases. This process is slightly time consuming If the hon. Members think, well, Constitutional power is in the hands of the President, therefore you consult and appoint, you can override the other authorities; fair, that can be done, there is no difficulty about that. Constitutionally it is perfect but then our society being a very complex society, always it is better to take a consensual approach and in this process delays do take place, I do not deny this. Some of the hon. Members have particularly referred to their own cases. Particularly the hon. Member from Tamil Nadu raised that issue. It is not difficult for me just to override either the Chief Minister or the Chief Justice and appoint but then would I be doing a service to the State? That is why we try to evolve a consensus and in evolving consensus sometimes the positions are taken so strongly that it becomes very difficult, but still in the process it takes time.

SHRI V GOPALSAMY: That means the ball is in their court in Tamil Nadu.

SHRI ALADI ARUNA alias V. ARUNACHALAM: He is dealing in a general way.

SHRI P SHIV SHANKER: I will leave it to Shri Aladi Aruna to deal with it, but I would like to tell one thing I would not like to shirk the responsibility by merely saying this. It is true, we face lot of difficulties and a lot of issues have been raised by hon Members in this regard. One of the hon. Members has raised the issue as to why a particular Chief Justice had been appointed only for two days Well, I cannot disclose I was not the Minister at that time but as a Minister now I take the responsibility on myself and say, I cannot disclose what is there in the file, how the file has developed.

श्री राम अवधेश सिंह: आप सदन को क्यों नहीं बतायेंगे ?

SHRI P. SHIV SHANKER: The point is, if there are charges against those who are not in this House and who cannot defend themselves, I am not going to say anything against them. Therefore, I would like to say that we make endeavours. I can assure that on my part I will make as much endeavour as possible. I would also like to tell hon. Members that I agree that a person should not be appointed—left to myself I totally agree—for two or three or four days or even for a week or one month or two month or two months It is perfectly all right, I quite agree, but then sometimes things emerge in a particular fashion. For example, I take the responsibility for having appointed recently a Chief Justice in Delhi High Court for five days. Yes, I myself say that because before me there was a precedent of only one day

SHRI M. S. GURUPADASWAMY: You have done better.

SHRI P. SHIV SHANKER: If I had the precedent of one day

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): You have done better.

SHRI P. SHIV SHANKER. One has to look into diverse factors and I would like, where our difficulties are genuine, hon. Members and also the nation to appreciate our difficulties. I have not been a hypocrite. What I have to say, I will say it frankly, I have always been saying so right from the beginning, when I was the Law Minister and also a Minister in this Central Government for the last seven to eight years.

Therefore, what I want to bring to the notice of the hon. Members is that the delay, in my submission, is inherent in the very system itself. *(Interruptions)* Well, you may not agree.

Mr. Gurupadaswamy, that is a different thing.

SHRI M. S. GURUPADASWAMY: It is not inherent. You yourself said that you can appoint a straight way but you do not.

SHRI P. SHIV SHANKER: Then I also said that in system itself you have got to be aware of the complex system of the society.

SHRI M. S. GURUPADASWAMY: You say that.

SHRI P SHIV SHANKER: That is exactly the thing. That is why before coming to this conclusion I have already laid the foundation for what I wanted to say. Therefore often times delays occur. Some of the hon Members have raised the question that vacancies are there from 1982, 1983, 1984 etc. That is not correct The vacancies go on getting filled up But subsequent vacancies also arise. If you take into consideration the subsequent vacancies and take it back to a particular date, that would not be the correct approach. So I thought I must say that because of exigencies, the delays occur.

SHRI NIRMAL CHATTERJEE (West Bengal): You are creating a problem for us. If you say that we have to trust and not examine it, you put us into difficulty as Members of Parliament

SHRI P. SHIV SHANKER: I am sorry that is a very easy way of putting the question which I will not answer. It is not a question of trust; it is a question of my oath

SHRI NIRMAL CHATTERJEE: I agree, but the point is that you say that there are such factors also which lead to delays...

SHRI P. SHIV SHANKER: I am saying this. Precisely that is what I have said.

SHRI NIRMAL CHATTERJEE: That is what you are saying. How are we to know that there are no other factors if the Parliament cannot scrutinise?

SHRI P. SHIV SHANKER: I am prepared. That is a matter which could be debated.

SHRI NIRMAL CHATTERJEE: You have talked of another meaning. You have talked of transfer. It could be valid. But how are we to judge whether the transfers are valid if the Parliament is barred from assessing?

SHRI P. SHIV SHANKER: I am not saying that.

SHRI NIRMAL CHATTERJEE: You help us by saying how we can scrutinise this.

SHRI P. SHIV SHANKER: I follow your point. It is true that Parliament and hon. Members of Parliament are entitled to the information, but not beyond a particular stage, because where it is a matter as I said, if by putting forth the papers before you, or by disclosing the whole facts before you, if I am placing a person in jeopardy who is not in a position to answer it, I shall not place those facts before you. I am sorry you have to live with me. Right or wrong, as Carlyle said it, my husband, whether good or bad, is my husband You have got to live with that. If you do not believe me, I leave it there.

SHRI V. GOPALSAMY: There is provision for divorce also.

SHRI P. SHIV SHANKER: Mr. *Chatterjee, speaking personally for* myself, I am prepared if you evolve a system—I do not know whether it is possible, but it has got to be gone into—whereby a few of the Opposition leaders, on the oath of secrecy, could look into the papers. Perhaps that could be one way of dealing with this. I am only trying to put across this view because speaking for

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myself, I have no objection. I am prepared to make a clean breast of myself on every file. But the system works in a particular manner . But we could perhaps evolve a method. It is a matter where we could sit and work out. Whether we can go into it is a question which could be debated in a different way, but this is not the time or occasion where I could express myself on those issues.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: The hon. Minister has reminded us about the vacancies in the Madras High Court that these have remained vacant since 1986. But for the information of the House, I may state that so far as Allahabad High Court is concerned, five vacancies remain there from 1984 and in Andhra Pradesh High Court, two vacancies remain from the year 1982. These facts must be known to the House. You cannot create the impression.....

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): The Minister is replying that point.

SHRI P. SHIV SHANKER: I would like to know if it is your case that after 1982, no appointments have taken place so that the vacancies...

SHRI NIRMAL CHATTERJEE: That is what you should answer. He says it is continuing vacancy. Your case is it is not. That you should definitely clearify.

SHRI P. SHIV SHANKER: At least in respect of Andhra Pradesh High Court, I am aware it is not. There is nothing of that type. What happens is this.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: It is given in the reply. It has been stated by the hon. Minister that two vacancies remain vacant from 1982.

SHRI P. SHIV SHANKER: I do not know in what context it has been said. I would like to go into it. I can check with you. There should be no difficulty about it. What I am trying to say....

SHRI V. GOPALSAMY: Can you enlighten us about the delay in filling up the vacancies in Madras High Court?

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: That he has already explained. But the position is worse in other States.

SHRI V. GOPALSAMY: You should come to that point.

SHRI P. SHIV SHANKER: In a collusion of yours and Mr. Aladi Aruna, I will never be tricked in!

Now, Sir, some of the honourable Members have raised the issue about the letters written often about the apponitment of Scheduled Caste Judges, Scheduled Tribe Judges, or of backward classes, women or minorities, etc., etc.

श्री राम अवधेश सिंह : कितनों है, जरा बताइए ?

श्री पी० शिवशंकर : मुझे निवेदन तो करने दीजिए । आपने और मालवीय जी ने इस इश्यू को रेज किया है ।

Sir, I would like to bring to your notice that if anybody is responsible for this, it is I who started the letter in August 1980. My letter of August 1980 was the subject-matter of the Judges case also. When I did it originally, I did it with a very honest intention, and I continue to have hope in that After all, ours is a very complex, intricate society. Different segments are there in our society— I need not go into the details. Every segment must have a share in the administration, be it the executive,

be it the legislature or be it the judiciary. It is from this angle that I wrote the first letter in August 1986, and I am glad that some of my successors later on took up that cause It is true that in spite of this—I concede and I am ashamed to say this as a member of the Government—adequate number of Scheduled Caste, Scheduled Tribe, Backward class, minority or women Judges are not there. I am fighting for it. It takes a little time for me. I have to persuade the other authorities also. I have my difficulties in that.

श्री राम अवधेश सिंह : उपसभाध्यक्ष महोदय, मैं पूछना चाहता हूं कि क्या आपको जानकारी में बैकवर्ड क्लास, शेड्यूल्ड क्लास और महिलाओं में योग्य लायर नहीं हैं, जिनकी प्रैक्टिस 10 साल से ऊपर की है ? इस आधार पर आपको खोजने में टटोलने में दिक्कत क्या हो रही है ?

श्री पी० शिव शंकर : भाई, मेरे खोजने या टटोलने की बात नहीं है । इसमें बहुत सी चीजें आती है । चीफ जस्टिस साहब को रिकमंड करना पड़ता है । क्या अच्छा होता कि धारा 217 या 124 का संशोधन इस तरह किया जाता कि सारे पावर मुझे दिए जाते तो आप जो चाहते हैं वह बड़ी आसानी से किया जा सकता ।

श्री अटल विहारी वाजपेयी : आप यही चाहते हैं ?

श्री पी० शिवशंकर : मैं, जो सवाल किया जा रहा है उसका जवाब दे रहा हूं । I have already explained the procedure for the appointment. There is a procedure which has to be followed.

श्री राम अवधेश सिंह : : डायरेक्शन तो दिया जा सकता है ? (**व्यवधान**) मुझे बोलने दीजिए । दूसरे भी बोले हैं।

उपसभाध्यक्ष (श्री जगेश देसाई) : आपके सिवाय बीच में किसी ने नहीं बोला है । आप दूसरी बार बोल रहे हैं।

श्री पी० शिव शंकर . आपने इश्यू उठाया है, आप मुझे बोलने दीजिए ।

Some of the authorities did respond. I am not saying that they did not respond Some have their own approaches. Now, in such a situation, it is only a question of continuous trial. We cannot give up this approach. We have got to go on requesting and we have got to go on persuading so that there is a proper representation to each and every segment in the society. Trials have been going on for quite some time. It is not as though it could be said that trials have never been made. But it presents quite a complex situation. I remember, one of the Chief Justices some time back wrote to me: "Where is it in article 217 about backward classes, Scheduled Castes, Scheduled Tribes, Muslims and so on and so forth? How are you bringing it in? Only go by the merit." What does he mean by merit? He says, "What I select is merit."

6.00 P.M. Now, what can I do? I have to persuade him. Long back one gentleman wrote to me. I have to persuade him. I have to request him to see the reason. I have to request him to see the complexities in the society. I can do only that Beyond that what can be done? Sometimes our difficulties are also there

One of the hon Members, I must say, made a very very uncharitable remark Since the remarks are such that they have brought me in, I think that I should explain the position. It is very easy to say in general terms. I would have understood if you had wanted to score a point by merely saying that judicial decisions are being influenced by politicians. You have gone to the extent of saying that Mr. Shiv Shanker taking advantage of his position, ha

[Shri P. Shiv Shanker]

influenced Judges and judgments. I am not angry with him. I pity him. I am really sorry that he is using a wrong forum for the purpose of expression of this thing. I would have very much liked if he had not done it. Merely because some judgments have gone against your Chief Minister or something like that, should you go on talking anything against some people?

PROF. C. LAKSHMANNA: Sir,...

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please sit down.

SHRI P. SHIV SHANKER: Please allow me to say this. I am not going to yield on this.

PROF. C. LAKSHMANNA: Just one second.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I will not allow you.

SHRI P. SHIV SHANKER: I am sorry. I will not yield. Having said something, it is unfair.....

PROF. C. LAKSHMANNA: You say anything about what we have said. I am only saying that no judgment has gone against the Chief Minister.

SHRI P. SHIV SHANKER: Whatever it is, I am not bothered about it.

PROF. C. LAKSHMANNA: That is all.

SHIV P. SHIV SHANKER: Or supposing some judge has decided against me should I go to the extent of saying this? I would have very much liked if he had some facts to tell me, "Look, in such and such a case you have interferred." Why this type of rumourmongering? I am not bothered about the reflection that he is making against me. I am prepared to answer. But, then, this is a reflection on the institution of Judges who are not in a position to answer here. I would have very much wished, and I am prepared *(Interruptions)*

SHRI V. GOPALSAMY: The Minister is replying.

SHRI P. SHIV SHANKER: On my part, I have not shirked my responsibilities. I am prepared. My conduct could be judged by Mr. Gurupadaswamy, Mr. Vajpayee or anybody else. It is no doubt true that I have spoken very frankly, very strongly on many an occasion, on many a subject. But I have not come down to this level to say things of this type. I would have very much wished, if he really wanted that this point should go home, he had told me I would like to tell the hon Member that if he can prove one allegation, I shall not continue to sit here. I will not only be not a Minister but I will resign my seat in Rajya Sabha. I am a man of that type If I could resign about 18 years of my secure life as a Judge, I would never continue to be in a position like this and do nasty things as he has tried to put. I have always lived on my own principles, whatever rumour-mongering goes on. The greatest misfortune is that I have come into politics. I am saying personally because I have known a lot of people talking. Therefore, I would have very much wished that he had substantiated, instead of making a general allegation and walking out. It is very unfair on the part of the Member to have said that. Then he says, "Dignity of the judiciary." From him should I receive lessons on the dignity of the judiciary? I have lived in that institution, and I am a product of that institution I have believed in criticism, and I am going to say what I have to say about the speech which has been mentioned. I have never shirked my responsibilities, if I have to say something Therefore, to make allegations of this type and to cast the aspersions, direct or

indirect, on the judiciary and then to proclaim that we are offenders of the same is something which is astounding.

One of the hon. Members—perhaps the same hon. Member—said the system of transfer of the judges is also used to intimidate so that judges may play safe This issue, of course, some of the other hon. Members have also raised. I would like to very clearly say that I started this transfer policy when I was the Law Minister in 1980 I was in the dock before the Supreme Court for this. Judges' case by itself is a decision where I have myself been a respondent. I had explained at that time in this House and in the other House as to why this policy has to be pursued. I had said, it not only advances the cause of national integration, but it is more reformative. I would not like to go into those details because my speeches are already printed and I have spoken on each and every point in detail. It is not my view alone. It started in 1957 when Mr Setalved used to be the Chairman of the Law Commission and Mr. Palkhiwala was one of the Members of the Law Commission at that time It is they who recommended that the Chief Justice and judges must be from outside. So much so I have quoted these things.

Even Mr. S.V. Gupte, who happened to be Attorney General during the Janata period said, these persons must be from outside. Those who are in the profession know how things have been going on I would not like to say anything more on this except that it has very great advantages It is true I for one personally feel, since this policy is not implemented fully difficulties are coming in The difficulties are not because of the fact that we are implementing it· difficulties are because of the improper implementatiion of this policy. Immediately after I took over in July 1987, I have been working on this and trying to see that is implemented wholly. Therefore to say, if a Chief Justice comes from outside difficulties will arise, is not correct. Of course, there are a minor points as you might say that he is not aware of the local laws. This is the argument which is often repeated. If that is the argument I have got to accede, then nobody should be appointed to the Supreme Court because he has to deal with different State laws also

SHRI ATAL BIHARI VAJPAYEE: Language problem is there.

SHRI P. SHIV SHANKER: It is not there. It will arise, it is going to arise, Vajpayee Ji. I would like to tell you this. I have told this earlier and I would like to tell you now because I have got my own experience on this. I would like to say what has happened in many cases

SHRI ALADI ARUNA alias V. ARUNACHALAM: In Supreme Court it rarely happens, but as far as High Courts are concerned, examination of the evidence deposed in th lower court is mostly examined in the High Court. That is why the judge who is having the knowledge of the local language is helped greatly to give correct judgment

SHRI P. SHIV SHANKER· If that be so, no judge sitting in the Supreme Court is competent to decide the case from Tamil Nadu, where the local laws of that State are involved. If your argument has to be accepted, it leads to this. But I am worried about another thing which I would like to tell you. In 1980-81 I visited some of the States and Law colleges. Law being taught in regional languages, when I was addressing at two places—the Rajasthan Law Faculty as also a college somewhere in the interior of Maharashtra, Latur the Law College students said they would be able to understand neither in Hindi nor in English. They asked me to speak in their language I am not against any regional language and I need not be misunderstood. This is a matter where

[Shri Aladi Aruna *alias* V. Arunachalam]

I would request all the hon. Members to kindly put their heads together and evolve certain norms in this. If you follow. If a man goes before the Supage and if they become judges of the High Court, a lot of consequences will follow. If a man goes before the Supreme Court and argues, in what language he has to argue?. Lot of things are there. To explain this quite a lot of time will be taken.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please be brief.

SHRI NIRMAL CHATTERJEE: Therefore, what is required is translation and this can be done in multilingual States

SHRI P. SHIV SHANKER: Mr Chatterjee, what will happen, I would like to put it this way. Supposing I come from Andhra knowing Telugu and I am a Judge of the Supreme Court and you come from Bengal knowing only Bengali and myself and you sit by the side of each other and then the third Judge from Orissa is there and all the three are from .. (*Interruptions*). Will you kindly wait?

SHRI ALADI ARUNA alias V. ARUNACHALAM: The present arrangement is a common language in Supreme Court.

SHRI P SHIV SHANKER: You don't want to listen to me.. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Minister how much time you would take to finish your reply?

SHRI P. SHIV SHANKER: I will take at least 40-45 minutes because I have to explain.

SHRI NIRMAL CHATTERJEE: We want to listen to you. You speak for an hour because you are an interesting speaker. You can educate us. In that case we can adjourn now because in any case the session is being extended.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I think, I will take the consensus of the House. Can the Minister reply tomorrow?

SOME HON. MEMBERS: Yes, tomorrow.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr Minister you can continue your reply tomorrow.

SHRI P. SHIV SHANKER: I have no problem. I am entirely in your hands

SHRI NIRMAL CHATTERJEE: We want you to satisfy us because we will be asking you questions.

SHRI P. SHIV SHANKER: I am prepared. (*Interruptions*).

SHRI NIRMAL CHATTERJEE: We will ask you questions. We want to be satisfied because we know you can satisfy us.

PAPERS LAID ON THE TABLE— Contd.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now, we will take up Paper to be laid on the Table. Shri Janardhan Poojari.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : मेरा प्वाइंट आफ आर्डर है...

उपसभाध्यक्ष (श्री जगेश देसाई) प्वाइंट आफ आर्डर है ?

श्री सत्य प्रकाश मालवीय : मेरी आपत्ति यह है कि जो सप्लीमेंटरी लिस्ट आफ बिजनेस है इसमें लिखा है at 6.00 P.M. Now, it is 6.15 P.M.